

In the Matter of: )  
 )  
Stakeholder Hearings on )  
Energy Facility Permitting ) Docket No. 99-SIT-6  
and Changes to the Siting )  
Process )  
 )

SACRAMENTO, CALIFORNIA

1:00 P.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBER PRESENT

Robert Laurie, Presiding Member

STAFF PRESENT

Bob Eller, Adviser to Vice Chairman Rohy

D. Stephen Williams, Advisor to Commissioner  
Laurie

Shawn Pittard, Advisor to Commissioner Moore

Jonathan Bles, Assistant Chief Counsel

Christopher Tooker

Robert Therkelsen

PUBLIC ADVISER

Roberta Mendonca

ALSO PRESENT

Stuart E. Wilson  
California Municipal Utilities Association

Manuel Alvarez  
Southern California Edison

Bill DiCapo, Attorney  
Livingston & Mattesich  
representing Southern Energy Delta

John P. Grattan, Attorney  
Grattan & Galati

Jeffery D. Harris, Attorney  
Ellison & Schneider  
Calpine/Bechtel

Karen K. Edson  
Edson + Modisette  
representing Independent Energy Producers  
Association

ALSO PRESENT

Robert F. Williams  
Williams Technical Associates, Inc.

Ted D. Guth, Consultant  
Permitting/Regulatory Affairs

Peter Okurowski  
California Environmental Associates

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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## 1 P R O C E E D I N G S

2 1:00 p.m.

3 PRESIDING MEMBER LAURIE: The purpose of  
4 this meeting is to review proposed modifications  
5 to both Energy Commission regulations and proposed  
6 modifications to the Warren Alquist Act.

7 My name is Robert Laurie; I am Presiding  
8 Member of the Siting Committee. To my right is  
9 Mr. Bob Eller. Mr. Eller is Senior Adviser to  
10 Vice Chairman David Rohy.

11 Mr. Therkelsen and Mr. Tooker, did you  
12 want to offer initial comments?

13 MR. THERKELSEN: Good afternoon,  
14 Commissioner, this is Bob Therkelsen from the  
15 Siting and Environmental Division.

16 There was a suggestion today that there  
17 are a small number of participants, and one  
18 suggestion was maybe everybody could somehow get  
19 around the table and talk into a mike to allow for  
20 flow of this.

21 I understand the Committee wants to go  
22 through each item one at a time and get comments.  
23 That was just a suggestion on one way to  
24 facilitate discussion.

25 PRESIDING MEMBER LAURIE: Well, the

1 reason I don't like doing that is because not  
2 everybody likes sitting at a table, and those who  
3 aren't at the table are therefore excluded from  
4 the conversation. And folks may come in late, and  
5 if folks come in late they will not automatically  
6 come to the table. And they will therefore be  
7 excluded.

8 So, I think I would not want to do that.  
9 But it's a great suggestion otherwise.

10 Ladies and gentlemen, it is our intent,  
11 and it's important that everybody have the handout  
12 that we're going to be working from, it is my  
13 intent to go through item by item and to have full  
14 and complete discussion of each item.

15 So, there will be an initial staff  
16 discussion of each item, and then we will open it  
17 up and we'd ask you to comment as to each item  
18 individually.

19 Mr. Therkelsen, did you have any overall  
20 general comments first?

21 MR. THERKELSEN: I guess the only  
22 overall general comment that I would make is the  
23 product that is up for discussion today represents  
24 the Siting Committee's recommendation, and that's  
25 the item that's up for discussion.



1                   These items that were included here were  
2           reflected by the Committee after much deliberation  
3           following the last hearing in which we got not  
4           only comment from many of the participants, the  
5           power plant developers and the other parties  
6           involved in siting cases, but a number of members  
7           of the public. And I know that the Committee  
8           discussions that we participated in we thought  
9           there was very good consideration of all the  
10          comments that were received.

11                   I don't have any other overarching  
12          comments than that.

13                   PRESIDING MEMBER LAURIE: Thank you.  
14          Initial questions in the audience? Sir, you had a  
15          question, please, come up to the microphone. Give  
16          us your name for the record, please.

17                   MR. WILLIAMS: Good day, Commissioner  
18          Laurie, staff members, I'm Robert Williams. I had  
19          my first outing here a month ago when I testified  
20          at the first hearing on this subject.

21                   My initial request is as follows:  
22          Because of the constraints of my personal  
23          consulting business I'm unable to have written  
24          testimony today, but intend to have some by  
25          January 28th.

1                   And I wanted to inquire as to the  
2                   format. Would it be acceptable to you if I took  
3                   an electronic copy of the staff recommendation and  
4                   interspersed intervenor position or my position  
5                   after each of these paragraph? Or what would be  
6                   your preference or the preference of the staff?

7                   PRESIDING MEMBER LAURIE: Thank you,  
8                   sir. Just generally, public comment in any form  
9                   is appreciated. And it's not so much any  
10                  preferred preference as to the ease in which the  
11                  comments might be received.

12                 Mr. Therkelsen, Mr. Williams indicates  
13                 that what he would like to do is take staff  
14                 position and offer his own comments underneath.  
15                 When you folks get that will you have any problem  
16                 with a communication received in that kind of  
17                 format?

18                 MR. THERKELSEN: No, we won't.

19                 PRESIDING MEMBER LAURIE: That's  
20                 certainly satisfactory to us, Mr. Williams.

21                 MR. WILLIAMS: Thank you.

22                 PRESIDING MEMBER LAURIE: And other  
23                 procedural or administrative questions?

24                 Let me introduce to my left Mr. Steve  
25                 Williams who is my Advisor.

1                   At this point, Bob, can you describe the  
2                   handout that we're using to make sure everybody is  
3                   reading off the same page, literally speaking?

4                   MR. THERKELSEN:  Actually what I'm going  
5                   to do is turn it over to Chris Tooker.  Chris  
6                   Tooker is the Project Manager for the staff on  
7                   this effort.  He replaced Terry O'Brien who moved  
8                   to a more influential position.

9                   PRESIDING MEMBER LAURIE:  Can everybody  
10                  hear okay?

11                  MR. THERKELSEN:  So I'll have Chris go  
12                  ahead and explain what the handout is here, and  
13                  have him introduce the items.

14                  DR. TOOKER:  Yes.  The handout we have  
15                  before us today for discussion at this hearing is  
16                  a revision of the package that was discussed at  
17                  the hearing of December 13th.  And it has been  
18                  modified to represent the Committee position based  
19                  on comments received at the hearing on the 13th,  
20                  and those received in writing, and based on  
21                  further discussions with staff and our input.

22                  And there is a summary of each of the  
23                  proposed changes and rationale for those changes  
24                  provided for discussion today.

25                  PRESIDING MEMBER LAURIE:  Mr. Tooker,

1       it's correct, is it not, that as to at least a  
2       couple of the items there is no formal Committee  
3       recommendation, but items are presented for full  
4       discussion nevertheless?

5               DR. TOOKER:  Yes, that's true.

6               PRESIDING MEMBER LAURIE:  Thank you.

7       Okay, any time you're ready to go.

8               DR. TOOKER:  Well, assuming we're going  
9       to take this item by item I would say with respect  
10      to the first item with regard to the elimination  
11      of the notice of intention, it is a Committee  
12      recommendation that staff supports, and we believe  
13      that the rationale provided here in the document  
14      justifies that recommendation.

15              PRESIDING MEMBER LAURIE:  Thank you.

16      Ladies and gentlemen, the issue -- does anybody  
17      question which page and which paper we're reading  
18      from?

19              Okay.  Under item one, changes to the  
20      Warren Alquist Act, elimination of the notice of  
21      intention.  Anybody desire to comment on that  
22      issue?

23              Okay.  We'll take them row by row.  Mr.  
24      Williams.

25              MR. WILLIAMS:  Well, thank you, sir, --

1                   PRESIDING MEMBER LAURIE: And you need  
2                   to state your name again.

3                   MR. WILLIAMS: Yes, I understand. I  
4                   hate to go first because I'm Robert Williams, I'm  
5                   from San Jose, California.

6                   PRESIDING MEMBER LAURIE: You don't have  
7                   to, you know? Or would you rather?

8                   MR. WILLIAMS: I was afraid you'd move  
9                   to the second item if nobody spoke up.

10                  (Laughter.)

11                  MR. WILLIAMS: I intend to comment at  
12                  some length, perhaps a page or more, in this area  
13                  because the answer to this first question, more  
14                  than anything, demonstrates that I don't think you  
15                  heard the public or the intervenors in the meeting  
16                  of December 13th. But let me try not to be too  
17                  confrontational, although it's difficult to not be  
18                  a little argumentative when one's blood is  
19                  boiling.

20                  There is no reflection anywhere in this  
21                  answers to questions about structuring a process  
22                  that recognized a difference in control of sites  
23                  by the applicant, and the schedule that would be  
24                  appropriate. And whether the plant was standard,  
25                  or whether the plant was new.

1                   This was the essence of my proposal to  
2                   the Committee on the 13th. Arguably it was a 12-  
3                   month schedule was appropriate for a plant that  
4                   was a duplicate of another plant. And a 12-month  
5                   schedule is appropriate if the applicant had site  
6                   control.

7                   Now, the answer here, and I refer you to  
8                   the third paragraph of the staff response, let me  
9                   just read a little bit for the benefit of the  
10                  radio public. I understand that this hearing is  
11                  being transmitted over the internet.

12                  At the Committee hearing on December  
13                  13th several participants voiced concern over the  
14                  elimination of the NOI, particularly with regard  
15                  to the need for a thorough alternatives analysis.

16                  The Committee does not believe the  
17                  importance of breadth and scope of the  
18                  alternatives analysis will be adversely affected  
19                  by the elimination of the NOI for the following  
20                  reasons:

21                  One, the California Environmental  
22                  Quality Act requires an examination of  
23                  alternatives. That isn't an answer, that's a  
24                  statement of fact.

25                  Two, section 1765 of the Commission's

1       siting regulations requires that projects exempted  
2       from the NOI provide information on the  
3       feasibility of available site facility  
4       alternatives. Again, that's a regulatory  
5       requirement, it doesn't say whether you can do it  
6       or not.

7               And then three, the comprehensive nature  
8       of the Commission's alternatives analysis in past  
9       siting cases provides a yardstick with which to  
10      compare the scope of future analyses.

11             Let me just comment on three for a  
12      moment, based largely on familiarity with items  
13      that are a matter of record in the December 13th  
14      hearing.

15             The Sutter case, for example, the  
16      participants in the December 13th hearing allege  
17      that on none of the alternatives sites, except the  
18      one that the applicant chose to pursue, had there  
19      ever been a bona fide offer to take control of  
20      that site. So none of the site alternatives  
21      arguably, at least, were legitimate.

22             Well, leaving that aside for the moment,  
23      let me go to a second case. And, again, I use  
24      specifics of specific projects so that this --

25             PRESIDING MEMBER LAURIE: You can only

1       utilize specific projects that have been  
2       completed.

3               MR. WILLIAMS: Thank you. That causes  
4       me to rephrase my point a bit.

5               PRESIDING MEMBER LAURIE: And for  
6       purposes of the audience, I think you're aware,  
7       our rules do not permit testimony on a case  
8       currently under consideration outside of a forum  
9       specifically designed to hear that case.

10              So if you're going to mention -- if you  
11       are interested in a particular case that is  
12       pending, you have to speak in great generalities  
13       and deal with the issue at hand without making  
14       reference to the specific case.

15              MR. WILLIAMS: Yes, just in the spirit  
16       of full disclosure I am a member of the public  
17       except with respect to the Metcalf Energy Center  
18       where I have filed as an intervenor and been  
19       granted that status.

20              The general proposition is this: The  
21       CEC appears to believe that they can remedy  
22       defects in the applicant's application for  
23       certification by cooking up their own  
24       alternatives. I'd be interested if any of the  
25       staff could care to respond on why hypothetical



1 alternatives amount to real alternatives under the  
2 California Environmental Quality Act.

3 My contention is that many of the  
4 alternatives invented by CEC Staff do, indeed,  
5 turn out to be hypothetical alternatives. And  
6 thus this is a bizarre way to run a railroad, to  
7 say that the siting process is adequately  
8 considering alternatives under both CEQA and under  
9 the Commission's comprehensive regulations.

10 Well, to get back to the issue at hand,  
11 my understanding -- well, again, what we were  
12 trying to suggest as intervenors is that the  
13 process that was originally conducted as the  
14 notice of intent provided all parties an  
15 opportunity to adequately review bona fide sites.  
16 Real sites could be reviewed under the proceedings  
17 that were known as the notice of intent.

18 The dearth of any power plant licensing  
19 for 10 or 15 years has caused much of what  
20 happened to be almost lost in antiquity, I would  
21 allege.

22 So we need to particularly now that  
23 there is deregulations and certain allegations of  
24 disclosing one's business plans, which I happen to  
25 believe are specious, there is still no reason why

1 a bona fide vendor of power supply purposes should  
2 not be required to go through a notice of intent  
3 process and have viable alternatives that are the  
4 applicant's alternatives, not the invention of the  
5 CEC Staff under consideration in the project.

6 Thank you.

7 PRESIDING MEMBER LAURIE: Thank you,  
8 sir. Next.

9 MS. EDSON: Hello, Commissioner Laurie.  
10 I'm Karen Edson, here representing the Independent  
11 Energy Producers Association.

12 And, you know, we're happy to go through  
13 these comments one at a time. I would like to  
14 make, I have a brief opening statement if I could.

15 I have to say that generally we're  
16 disappointed, in fact very disappointed with the  
17 package of recommendations. We had hoped to see a  
18 package that would, as SB110 suggested, find ways  
19 to improve the process so that facilities can be  
20 sited in a timely manner.

21 Having said that we see a number of  
22 these recommendation as in fact directly contrary  
23 to that objective.

24 Further, perhaps most specifically,  
25 recommendations for example allowing changes in

1 the schedule, recommendations to eliminate small  
2 power plant exemption and negative declaration  
3 process, recommendations to expand Commission  
4 jurisdiction over repowering projects. We look at  
5 this package of recommendations as a whole and we  
6 find it troubling.

7 We have a couple of suggestions that  
8 we'd like to see added to the mix today that we  
9 did not talk about at the last hearing, but that  
10 on further reflection we think should be  
11 considered by the Commission in this process.

12 First, we think the Commission should  
13 consider statutory amendments to require the  
14 Energy Commission to rely upon the analysis and  
15 judgment of local air quality management districts  
16 and regional water quality control boards, rather  
17 than conduct its own independent and redundant  
18 analysis of those issues.

19 Second, we think the regulations should  
20 be amended to create an affirmative mechanism for  
21 staff to reach agreement with other parties in  
22 proceedings.

23 PRESIDING MEMBER LAURIE: Go over that  
24 one again.

25 MS. EDSON: The regulation should be

1 amended to create a mechanism that goes far beyond  
2 what is put forward in this package, and in fact,  
3 encourages the staff to reach agreements with  
4 parties in siting cases. We think that's a quite  
5 critical way to help expedite these cases, to put  
6 those issues that are not controversial behind the  
7 contentious and litigated part of the process.

8 Third, we think the Commission should  
9 come to grips with the local override issue rather  
10 than reserve that for further deliberation and  
11 we'd like to see that discussed quite fully with a  
12 recommendation. We have one coming out of this  
13 process.

14 PRESIDING MEMBER LAURIE: That's why  
15 it's on the agenda, Ms. Edson.

16 MS. EDSON: I understand that, but I  
17 understood the writeup to suggest that there were  
18 a number of options reported, and there was going  
19 to be a lengthier process than what was gone  
20 through here. If I misunderstood that, that's  
21 encouraging.

22 That's really the crux of our  
23 affirmative recommendations.

24 With regard to the notice of intent  
25 recommendation I feel a little repetitive, having

1       made these comments at the last hearing, but I'll  
2       make them again. I think, in fact, Mr. Williams'  
3       comments are exactly why we think it's  
4       inappropriate and unnecessary to move forward with  
5       this legislative recommendation.

6               I agree with the characterization, much  
7       of the characterization of the NOI process in the  
8       write up, and as I think most people here  
9       recognize here, the NOI, for all practical  
10      purposes, applies in California to coal plants and  
11      nuclear plants.

12             Having said that, a proposal to  
13      eliminate the NOI process which contains a number  
14      of provisions that provide important consulting  
15      direction with other agencies, et cetera, simply  
16      creates levels of concern that I think -- it  
17      should not be the kind of priority to drive  
18      movement at this time.

19             This may be something that goes into a  
20      clean-up bill of another time, but we're hoping to  
21      see out of this process a concise package of  
22      recommendations which will have very concrete  
23      specific benefits to the siting process, itself.

24             PRESIDING MEMBER LAURIE: Thank you very  
25      much.

1                   MR. ALVAREZ: Good afternoon,  
2           Commissioner. Manuel Alvarez of Southern  
3           California Edison.

4                   With regards to item 1, the notice of  
5           intention process, I guess fundamentally in terms  
6           of where the industry has evolved to, we have no  
7           problem with the issue of eliminating the NOI.

8                   But it does bring up the issue of its  
9           purpose initially, and as Ms. Edson mentioned  
10          earlier in her comments, it's intended for coal  
11          and nuclear facilities.

12                  So I guess my suggestion is perhaps the  
13          Commission should be more explicit and just argue  
14          for a 24-month period for certification of coal  
15          and nuclear facilities, and leave the 12-month  
16          period for natural gas and other thermal  
17          facilities that the Commission has to certify.

18                  So my suggestion there is basically  
19          let's just be direct on what we're trying to do  
20          here, and state explicitly that a 24-month period  
21          for certification is intended for only coal and  
22          nuclear facilities.

23                  Thank you.

24                  PRESIDING MEMBER LAURIE: Thank you.

25          Anybody else wish to comment on this item?

1                   Thank you, we'll move on to the next  
2                   item, Mr. Tooker, Mr. Therkelsen.

3                   DR. TOOKER: Yes, the second item under  
4                   changes to the Warren Alquist Act is the  
5                   Committee's recommendation that small power plant  
6                   exemption be eliminated, and that those projects  
7                   that are currently able to file an SPPE would be  
8                   required to file an application for certification.

9                   PRESIDING MEMBER LAURIE: Comments. Mr.  
10                  Williams?

11                  MR. WILLIAMS: So that the record will  
12                  not show that I'm -- this is Robert Williams of  
13                  San Jose. Let me say that I endorse this  
14                  recommendation to eliminate the small power plant  
15                  exemption. I think it is, as I understand their  
16                  recommendation, you would then eliminate the  
17                  exemption for plants under 50 megawatts, is that  
18                  correct?

19                  MR. THERKELSEN: The SPPE applies to  
20                  plants between 50 and 100 megawatts.

21                  MR. WILLIAMS: Okay. And so you would  
22                  eliminate that in a plant between 50 and 100  
23                  megawatts would require an application for  
24                  certification if your recommendation is adopted,  
25                  is that correct?

1 MR. THERKELSEN: That would be correct.

2 MR. WILLIAMS: Well, I support that  
3 idea. In earlier testimony we urged that that  
4 recommendation be lowered somewhat because  
5 significant amounts of pollution can be observed  
6 to come from plants smaller than 50 megawatts.

7 For example, the discharges from the  
8 Greenleaf Plant near Sutter.

9 PRESIDING MEMBER LAURIE: Yes, sir.

10 DR. GUTH: I'm Dr. Ted Guth, a  
11 consultant out of San Diego. I work with a number  
12 of the solid fuel-fired plants in California.

13 Many of these plants are in the 25 to 50  
14 megawatt range, and are ideal candidates for  
15 repowering. Repowering meaning they would utilize  
16 the existing steam turbine, put in a gas turbine  
17 and make use of that existing steam turbine, and  
18 increase their output by somewhere between 50 and  
19 100 megawatts in size.

20 It just happens that that is an absolute  
21 ideal fit in a combined cycle mode for gas  
22 turbines.

23 I'm not necessarily opposed to the  
24 abolishment of the small power plant exemption,  
25 but I do think if it does get exempted there needs



1 to be some other mechanism where these plants that  
2 are basically being installed on existing plant  
3 sites do not then have to go through the full AFC  
4 process like a 700 or 800 megawatt plant, that has  
5 much more expense involved than this would, and  
6 would basically make these plants un-do-able.  
7 They would not be practical if they had to go  
8 through that full process.

9 I think there is a place in the  
10 deregulated marketplace for projects in the 50 to  
11 100 megawatt range. And for the survival of these  
12 existing facilities I think something like the  
13 small power producer exemption is absolutely  
14 mandatory.

15 So if we're going to eliminate this,  
16 we've got to come up with some other way that at  
17 least expedites the review or in some way  
18 separates the small power producers from the mega  
19 projects, and gives them some incentive to go  
20 ahead. Because they just can't do it if they have  
21 to go the other route.

22 Thank you very much.

23 PRESIDING MEMBER LAURIE: Thank you,  
24 sir. Dr. Guth, I had a card from you. Did you  
25 want to offer additional comments --

1 DR. GUTH: No, no, no, this was on my  
2 point. I hit it. Okay, thank you.

3 PRESIDING MEMBER LAURIE: Yes.

4 MS. EDSON: I'm Karen Edson again. I'd  
5 like to echo those comments. I think that it's  
6 really inappropriate to be eliminating an option  
7 for these relatively small projects, the kind of  
8 projects that Dr. Guth just described may be ideal  
9 candidates for moving through in an expedited  
10 manner.

11 There's no reason that there should not  
12 be a mechanism for a cogeneration projects that  
13 also are -- the scale of projects that tend to fit  
14 within the less than 50 megawatt size.

15 So, you know, IEP opposed this  
16 recommendation at the last hearing and continues  
17 to oppose eliminating this kind of review option  
18 for small projects. If there is another  
19 affirmative mechanism that developers of those  
20 projects support, you know, I think we would want  
21 to lean on their analysis of this issue.

22 PRESIDING MEMBER LAURIE: Ms. Edson,  
23 question. Do you believe that the environmental  
24 impacts of a project are always directly related  
25 to the size of the project?

1 MS. EDSON: No, but I think that's  
2 entirely separate from this question. Because the  
3 SPPE is something that is approved only in the  
4 event of essentially having a fully mitigated  
5 negative deck.

6 So if those environmental impacts exist  
7 and those concerns exist, then the SPPE is not  
8 granted. It is only granted in the event those  
9 adverse environmental impacts are fully mitigated.

10 PRESIDING MEMBER LAURIE: Okay, but  
11 let's put SPPE aside for a moment. Let's say it's  
12 a good idea to consider an expedited process for a  
13 smaller project. And we agree that it is not  
14 conclusive that in every case smaller projects  
15 automatically have less environmental impact than  
16 larger projects. You can have a really bad  
17 smaller project that requires an awful lot of  
18 analysis.

19 So, how do you determine, based upon  
20 size of the project, what the environmental impact  
21 is automatically going to be, so that you can give  
22 it a different process?

23 MS. EDSON: Well, I think establishing  
24 that kind of threshold is consistent with  
25 thresholds that are established in many areas of

1 regulation.

2 When certain levels of air quality  
3 regulation are required, it's triggered by, in  
4 some cases, I believe, to be the size of the  
5 project. And I think project size is how the  
6 Energy Commission's original jurisdiction  
7 threshold is established.

8 So I think it's a matter of policy and  
9 exercising your best judgment to decide what a  
10 rational cutoff is for that.

11 I mean there certainly are some  
12 distinctions with regard to size, with regard to  
13 the size of linear facilities associated with  
14 projects. There are issues associated with, as  
15 Dr. Guth suggested, whether a project is a  
16 repowering project or not.

17 The Commission has, within its powers,  
18 great discretion to establish threshold criteria  
19 for a number of these kinds of proceedings. And  
20 we think it's inappropriate to be eliminating  
21 these options when there may be excellent  
22 candidates for this kind of review process.

23 PRESIDING MEMBER LAURIE: Okay, well, I  
24 understand that, and I respect that. But, I also  
25 want to respond to the question of whether it is

1       feasible to have an expedited process for smaller  
2       plants.

3               MS. EDSON:  If you don't mind, Dr. Guth  
4       is dealing with this on a kind of day-in and day-  
5       out basis.  I'd kind of like to get him engaged in  
6       this conversation, too.

7               DR. GUTH:  One way --

8               PRESIDING MEMBER LAURIE:  Let me again  
9       state what my problem is.

10              DR. GUTH:  Okay.

11              PRESIDING MEMBER LAURIE:  My problem is  
12       that by law every project has to have an  
13       environmental analysis.  And you don't know what  
14       that is until you look at it.  And it is not  
15       necessarily related to the size of the project.

16              So you can't take a project under  
17       certain megawattage and say, we're not going to  
18       look at something.  And so I don't know how you do  
19       that.

20              DR. GUTH:  Well, one suggestion, if I  
21       might, is if a project is going to be repowered  
22       and when I say repowered, if it was going to be a  
23       natural gas fired gas turbine that then supplies  
24       heat to its existing steam turbine, you're  
25       basically putting a natural gas fired unit on a

1 site where there was a power plant operating.

2 And I guess I will maintain that the  
3 impacts from that project, since you're going on  
4 the same site but now gas firing instead of what  
5 was typically solid fuel or liquid fuel firing,  
6 the environmental impact of that is going to be  
7 more positive.

8 With the possible exception, and this  
9 does need to be looked at, of a gas line extension  
10 might have to be made to the site, or a  
11 transmission line. But the --

12 PRESIDING MEMBER LAURIE: Let me stop  
13 you there. If I talk about CEQA do you know what  
14 I'm talking about?

15 DR. GUTH: Yes.

16 PRESIDING MEMBER LAURIE: Okay. You  
17 have a project that had an EIR done on it. You're  
18 coming in sometime later to modify that project.  
19 CEQA says you do an environmental analysis, maybe  
20 a supplemental or subsequent EIR. And if the  
21 environmental impact is, in fact, positive, the  
22 analysis will say that.

23 But do you agree with me that CEQA  
24 requires you to do the supplemental analysis?

25 DR. GUTH: Something, yes, absolutely.

1 But I'm maintaining that that something has to be  
2 less significant for a project like that than for  
3 a green field 800 megawatt plant being placed  
4 where there currently is no power plant.

5 And that's the distinction that we're  
6 asking be made. And the small power producer  
7 exemption covers this area. And then if that goes  
8 away, then we don't have a plan B. We're all on  
9 plan A.

10 MS. EDSON: And, Commissioner Laurie,  
11 I'd just like to add that, reiterate my earlier  
12 point. I think size thresholds are quite common  
13 in regulation, and in some cases as a first blush  
14 threshold they serve an important role.

15 The Energy Commission has had this  
16 process on the books. It's been utilized by a  
17 number of developers over the years, but some  
18 projects, I believe, have been green field  
19 projects, others have been industrial on-site  
20 projects, and those projects have been able to go  
21 through this process and be fully mitigated to the  
22 satisfaction of the Energy Commission in all  
23 cases.

24 Most of them within the statutory  
25 timelines that are laid out --

1                   PRESIDING MEMBER LAURIE:   Okay, does  
2                   CEQA distinguish as to size?

3                   MS. EDSON:   Not to my knowledge.   It  
4                   distinguishes with regard to environmental impact.  
5                   The argument you're making is that the Commission  
6                   should have jurisdiction over every power plant in  
7                   the state, which is --

8                   PRESIDING MEMBER LAURIE:   Over every  
9                   what?

10                  MS. EDSON:   Your argument logically  
11                  applied would suggest that the Commission's  
12                  jurisdiction should not begin at 50 megawatts, it  
13                  should begin at zero megawatts.

14                  PRESIDING MEMBER LAURIE:   No, no, no, --

15                  MS. EDSON:   Now, you have backed off of  
16                  that recommendation --

17                  PRESIDING MEMBER LAURIE:   -- excuse me,  
18                  Ms. Edson.   I didn't say that at all.

19                  MS. EDSON:   No, you didn't.   I'm simply  
20                  saying that your argument that you can't apply --  
21                  it appears that a numerical size threshold can't  
22                  work.

23                  PRESIDING MEMBER LAURIE:   No, no, I  
24                  didn't say it can't work.   We are mandated to do  
25                  an environmental analysis.



1 MS. EDSON: Yes.

2 PRESIDING MEMBER LAURIE: In doing that  
3 environmental analysis I don't know how we  
4 arbitrarily say we're not going to do one for  
5 plants under a certain size.

6 MS. EDSON: What you say is you approve  
7 that small power plant exemption under that size  
8 if it is fully mitigated. You do an environmental  
9 analysis. You have jurisdiction.

10 PRESIDING MEMBER LAURIE: Well,  
11 you're --

12 MS. EDSON: So to suggest that there's  
13 not an environmental analysis, I think, is simply  
14 wrong.

15 PRESIDING MEMBER LAURIE: You're back to  
16 the SPPE question again.

17 MS. EDSON: Well, that's the proposal.

18 PRESIDING MEMBER LAURIE: I have to go  
19 beyond that. There was comment about developing  
20 a --

21 MS. EDSON: I apologize, you're right.

22 PRESIDING MEMBER LAURIE: -- process  
23 that would expedite generically projects under a  
24 given size. And I didn't want to argue the point.  
25 I'm interested in pursuing that point.

1 MS. EDSON: I apologize, I'm sorry.

2 PRESIDING MEMBER LAURIE: The point  
3 being is I don't know under CEQA how you do that.  
4 In my CEQA experience I have never had a project  
5 treated differently under CEQA merely because of  
6 its size.

7 MR. BLEES: Excuse me, Commissioner  
8 Laurie, could I offer a perspective here which I  
9 think directly answers your question.

10 PRESIDING MEMBER LAURIE: Put your name  
11 on the record, Mr. Blees.

12 MR. BLEES: Yes, Jonathan Blees,  
13 Assistant Chief Counsel of the Commission.

14 You are absolutely correct, CEQA does  
15 not make any kind of general distinction based on  
16 size. And nothing in the staff's proposal or in  
17 any proposal that sets a jurisdictional threshold  
18 for the Commission at any megawatt number, such as  
19 the current statute of 50 megawatts, does create  
20 any distinction in the type of environmental  
21 analysis required under current law.

22 The Energy Commission is allowed to  
23 exempt from its AFC requirement power plants  
24 between 50 and 100 megawatts. That exemption may  
25 be granted only if the Commission determines that

1       that plant will not have a substantial adverse  
2       effect upon the environment.

3               In other words, in order to grant an  
4       SPPE the Commission must do a CEQA analysis.

5               Now, for those plants that are under 50  
6       megawatts, CEQA still requires the permitting  
7       agency, which is not the Energy Commission, it's  
8       the county board of supervisors or whoever the  
9       permitting agency is, CEQA still requires that  
10      agency to do an environmental analysis.

11              So, all plants between zero megawatts  
12      and 50, between 50 and 100, and 100 and up are  
13      covered by an environmental analysis under CEQA.

14              In other words, no matter where you draw  
15      the line, if you draw it at zero, if you draw it  
16      at 50, or if you draw it at some other number,  
17      CEQA still requires that an environmental analysis  
18      be done.

19              We're just talking about here, you know,  
20      where should the line be drawn between who does it  
21      and who doesn't do it.

22              One of the reasons the staff is  
23      proposing elimination of the SPPE is that the  
24      environmental analysis necessary to grant an SPPE  
25      is basically the same as the environmental

1 analysis required to grant an AFC.

2 So if we're doing the same environmental  
3 analysis, you know, why have two different  
4 processes.

5 MR. THERKELSEN: If I may interject.

6 Actually, Jonathan, the reason the staff  
7 originally threw out the idea of eliminating SPPE  
8 was not because of the environmental analysis.  
9 The original reason was to avoid a two-step siting  
10 process. Why do some projects within a certain  
11 size range go through a two-step process whereas  
12 others go through a one-step process.

13 And I think that's one of the concerns.  
14 The other concern with the SPPE is, as currently  
15 done, it has an unrealistic time expectation that  
16 currently exists within the law or the regulation,  
17 I don't remember which.

18 I think one option for the Commission to  
19 consider clearly is, is there a need for a more  
20 expedited siting process for projects that have  
21 less potential from the outside for significant  
22 environmental impacts.

23 And to that extent, I think Commissioner  
24 Laurie's question was good, is megawattage the  
25 criteria for having an expedited process, or

1       should there be some other criteria.

2               And, you know, I would be curious, too,  
3       to see if people can identify other criteria that  
4       the Commission may consider for having a more  
5       expedited process.

6               PRESIDING MEMBER LAURIE:   For example,  
7       if I go in for a local project I turn in with my  
8       application, or staff does, and I think we call it  
9       an initial study.  And that's a cursory review of  
10      the potential environmental impacts.  And it's  
11      from that that a decision is made to go with an  
12      EIR or negative dec.

13              What we're talking about is a process  
14      that following an initial study there is the  
15      equivalent of negative dec information available  
16      to us so as to avoid the necessity of going  
17      through our EIR equivalent process.

18              MR. THERKELSEN:  And for example, the  
19      projects that we see that can be permitted the  
20      most expeditiously are those projects that have,  
21      as Mr. Williams pointed out earlier, site control,  
22      those projects that have their offsets already in  
23      hand, those projects that are in full compliance  
24      with local land use designations, those projects  
25      that have a known source of water and clear lack

1 of impacts associated with that.

2 You know, those are criteria or things  
3 that are different than a megawatt limit. It's  
4 very clear from our experience you can have an 80-  
5 megawatt project, for example municipal solid  
6 waste projects we saw years ago, that can have as  
7 great, if not greater, impacts than an 800-  
8 megawatt natural gas-fired project.

9 And the question in my mind is is there  
10 a set of criteria the Commission could  
11 consistently and easily use to be able to permit  
12 projects under, if you will, a mitigated negative  
13 declaration kind of process. How do you define  
14 those criteria.

15 The other problem if you do that kind of  
16 process is how do you factor in the fact that most  
17 air districts want the full 180 days to do their  
18 determination of compliance or their authority to  
19 construct, and most regional water quality control  
20 boards want a similar amount of time.

21 So you have an expedited process, and  
22 the desire it would be to make it one stop, how do  
23 you factor that, how do you create that kind of a  
24 thing, if that's desirable?

25 PRESIDING MEMBER LAURIE: Okay, who has

1 the microphone.

2 MS. EDSON: If I might, Commissioner  
3 Laurie, before I defer to Mr. Grattan, I think Mr.  
4 Therkelsen's comments are quite constructive. IEP  
5 would be very happy to work with the Commission to  
6 develop a set of criteria for expedited power  
7 plant review. There's no question that those  
8 kinds of alternatives are appropriate.

9 I suspect we will continue to have  
10 concerns about eliminating the small power plant  
11 exemption process, but --

12 PRESIDING MEMBER LAURIE: I understand  
13 that.

14 MS. EDSON: -- having said that, I think  
15 this kind of approach to, you know, finding ways  
16 to make this process more workable is quite  
17 beneficial. So I think that could be quite  
18 constructive.

19 PRESIDING MEMBER LAURIE: Thank you very  
20 much.

21 Mr. Grattan.

22 MR. GRATTAN: John Grattan. I'd like to  
23 echo that last statement that IEP made. I think  
24 that on behalf of other applicants we'd be more  
25 than willing to work with the Commission, with

1 staff for some sort of expedited process.

2 In the meantime I don't think we should  
3 be doing away with the -- the proposal is to  
4 eliminate the small power plant exemption, which  
5 is essentially an initial study and a negative  
6 declaration. It's exactly the process,  
7 Commissioner Laurie, that you see as a land use  
8 attorney in working with all the governments.

9 The proposal on the table isn't an  
10 expedited process, it's to eliminate the SPPE.  
11 We'd be more than in support of another form of  
12 expedited process based on criteria other than  
13 megawattage.

14 PRESIDING MEMBER LAURIE: Thank you.

15 MR. WILLIAMS: Robert Williams from San  
16 Jose. I thought the Assistant General Counsel  
17 stated it very well. I missed your name, sir, it  
18 was Jonathan?

19 MR. BLEES: Jonathan Blee, B-l-e-e-s.

20 MR. WILLIAMS: Thank you.

21 Yes, it seems to me, and the Chairman  
22 has it exactly correct, that to make an  
23 environmental judgment you need some type of  
24 environmental assessment.

25 Now just sitting here in the audience I



1 think in this era of gas turbines there is the  
2 mindset that as long as the NOx is constant, as  
3 long as the particulate is constant, as long as  
4 the ozone is constant, the megawatts don't matter.

5 But let me remind you that these still  
6 are thermal power plants. And so a thermal power  
7 plant that's 100 megawatts now can be upgraded to  
8 600 or 800 or 1000 megawatts and have the same NOx  
9 and ozone releases, will inevitably have ten times  
10 as much thermal pollution. Maybe offset somewhat  
11 by a slight change in thermal efficiency.

12 So a cloud of steam that was acceptable  
13 when the plant was 50 or 100 megawatts is a  
14 devastating visual impact when it's 500 megawatts.  
15 It may kill a fishery, it may, if you're  
16 circulating the water into a refuge, it may cause  
17 all kinds of fog, moisture effects in the  
18 immediate environs.

19 So, I think you had it right the first  
20 time when you said you have not seen any projects  
21 where you can make a determination without first  
22 doing the analysis. And I would counsel you to  
23 pursue your original inclination in that area.

24 Thank you.

25 PRESIDING MEMBER LAURIE: Thank you,

1 sir. Any additional comments?

2 Mr. Harris. Afternoon, sir.

3 MR. HARRIS: Good afternoon,  
4 Commissioner, and Members of the Committee and  
5 everyone else.

6 My name's Jeff Harris, I'm here on  
7 behalf of Calpine Bechtel.

8 Briefly I'd want to reiterate our  
9 support for maintaining the small power plant  
10 exemption. We think that's a useful tool. And to  
11 the point of environmental review, I think as Mr.  
12 Blees said, essentially that once the exemption is  
13 granted my understanding is that there is  
14 additional environmental review at the local level  
15 with the project. So it's not like the  
16 environmental review would end with the exemption.  
17 At least that's my understanding of that process.

18 Also want to support the discussion I  
19 think that occurred outside of this item about  
20 that expedited process, and be willing to  
21 participate in that process, as well.

22 PRESIDING MEMBER LAURIE: Thank you.

23 DR. TOOKER: I'd like to provide  
24 clarification. Under the SPPE process the  
25 Commission is lead agency and the local

1 governments or other agencies that issue  
2 subsequent permits use the Commission's document  
3 for their decisionmaking.

4 PRESIDING MEMBER LAURIE: Thank you.  
5 Anything else?

6 Thank you. Next item, please.

7 DR. TOOKER: Item number 3, project  
8 changes. The Committee recommends that the Warren  
9 Alquist Act be amended to provide a siting  
10 committee with authority to extend a project  
11 schedule in response to any major changes made to  
12 the project by an applicant. The project schedule  
13 could only be extended after the siting committee  
14 held a hearing on the issue and made a finding  
15 that additional time was needed to allow the  
16 Commission to fully review the project changes.  
17 The decision of the Committee could be appealed to  
18 the full Commission.

19 PRESIDING MEMBER LAURIE: Okay,  
20 comments?

21 MR. ALVAREZ: Manuel Alvarez, Southern  
22 California Edison. Project changes, I guess we  
23 just have one minor comment. In the write-up it  
24 seems to imply that the entire decision would be  
25 based on the Committee recommendation and I guess

1 I'm unclear what the role of the applicants are  
2 involved in those decisions on changes.

3 And then I guess the other question is  
4 whether the hearing and appeal process that would  
5 be undertaken under the proposal would be I guess  
6 better used for hearing time on the merits of the  
7 case, itself.

8 So, I guess the process starts, you  
9 stop, you have a hearing at the committee level,  
10 and then you go to the full Commission to get the  
11 change in schedule. And I'm just not sure where  
12 the applicant --

13 PRESIDING MEMBER LAURIE: But that  
14 doesn't hold the project up.

15 MR. ALVAREZ: So you still continue to  
16 process the application?

17 PRESIDING MEMBER LAURIE: Yeah, because  
18 all we're doing is we're talking about changes in  
19 the schedule.

20 MR. ALVAREZ: Okay, it wasn't clear to  
21 me whether the project would continue --

22 PRESIDING MEMBER LAURIE: That's my  
23 understanding. Mr. Therkelsen, what's your  
24 understanding?

25 MR. THERKELSEN: That's correct. Would

1       see that decision on the schedule, then go into  
2       the full the Commission. The project would  
3       continue.

4               MR. ALVAREZ: Okay, that's fine.

5               PRESIDING MEMBER LAURIE: Additional  
6       comment?

7               MS. EDSON: I'm Karen Edson for IEP. I  
8       feel like I'm going to be repeating myself a lot  
9       compared to the last hearing, but we think  
10      it's -- we should not be finding ways to extend  
11      project schedules. We should be finding ways to  
12      get these problems resolved and that a move in the  
13      direction recommended here is one that will  
14      further discourage applicants from responding to  
15      community concerns in the siting process, itself.

16              And to put applicants in the position  
17      where when they file with the Commission they're  
18      put in the position of locking that project in  
19      place in cement I think is simply not constructive  
20      to a process that can be responsive to community  
21      concerns.

22              PRESIDING MEMBER LAURIE: Thank you.

23      Let me share with IEP and others why I strongly  
24      support the recommendation of the Committee.

25              When a project is modified we are

1       obligated by law to conduct an environmental  
2       analysis of the project as modified. I don't  
3       think anybody questions that.

4               And so what has happened on more than  
5       one occasion is a project will be going along, it  
6       is modified six months, eight months, nine months,  
7       ten months down the road, and sometimes the  
8       modifications are substantial.

9               Well, the law clearly says that we have  
10      to make sure when we approve the project that what  
11      we've examined is the project that stands before  
12      us, which means the project as modified.

13              So what do we do when we're up against  
14      the 12-month deadline and the developer is saying,  
15      hey, guys, you have to approve that project, you  
16      have a deadline coming up. And our response is,  
17      well, what do you want us to do because we have to  
18      examine the project.

19              I don't like being in that position  
20      because games are played, and I don't appreciate  
21      those games. And the purpose of this proposal is  
22      to make sure that the game is played fair.

23              If a project applicant, in the best  
24      interest of the project, wants to change it, well,  
25      that's the project applicant's business. We don't

1 dictate those changes.

2 But we're also obligated under the law  
3 to examine the project as modified. And if  
4 everybody in the room agrees that it takes -- it's  
5 reasonable to take three months to have to examine  
6 this change and we're in the 11th month, then what  
7 do we do? Do we deny the project?

8 If there is another answer to that I'm  
9 more than happy to listen to it.

10 MS. EDSON: My response is that's a  
11 reasonable answer. That applicants, when they  
12 elect to make a change, are in a position to have  
13 to weigh the jeopardy that may put their project  
14 in. And it seems to me the tradeoff here is if  
15 you make that change are you automatically giving  
16 the committee ability to extend the project  
17 schedule or not.

18 And what happens in my experience is  
19 that if the change is so significant that it  
20 creates the need for extensive environmental  
21 analysis that would extend beyond the 12 months,  
22 the Commission's signal to the applicant should  
23 be, we can keep your 12-month schedule but the  
24 answer is no.

25 So, you know, the Commission, it seems

1 to me, it has the power, it has the power to  
2 operate within its 12-month obligation and  
3 discipline my clients to come forward with  
4 projects that are complete and able to be analyzed  
5 in that period of time.

6 PRESIDING MEMBER LAURIE: Can I respond  
7 to that for a moment?

8 MS. EDSON: Certainly.

9 PRESIDING MEMBER LAURIE: I appreciate  
10 that last statement because I know that we can say  
11 no. I know that if you're in front of us and  
12 you're representing a client and we say to you,  
13 this data is missing, you have a choice. We  
14 cannot approve the project, or you can wait.

15 Well, you're not everybody, Ms. Edson.  
16 And not everybody deals the same way you do. And  
17 as a result we get into those situations and  
18 suddenly we start getting nasty letters from  
19 legislators and others who are wondering why we  
20 are screwing with the process.

21 And, of course, we cannot respond. So  
22 that is our difficulty.

23 I assure you, more than one time, not to  
24 you, but to others, we have said in plain English,  
25 you know, we're going to say no unless you agree,



1 or unless you desire to extend.

2 The teeth we have had to pull in order  
3 to get a representative to say, yeah, we  
4 understand, there's a problem. You know, what can  
5 I say? Folks have their clients here, and  
6 everybody's embarrassed to say, you know, we have  
7 a problem, we'll be willing to extend. People  
8 don't want to do that. Which puts it back in our  
9 lap.

10 And we are very unhappy when we're put  
11 in that kind of light. And that's the problem  
12 we're trying to address with this issue.

13 MS. EDSON: Well, I do appreciate that,  
14 and I think that kind of problem is similar to the  
15 problem that we'll probably talk about later in  
16 the local override area.

17 But I think probably the Committee has  
18 to actually say no once, and all of a sudden those  
19 negotiations will really begin to occur.

20 PRESIDING MEMBER LAURIE: Well, we may  
21 very well be getting to that point. Sooner than  
22 one might anticipate.

23 Mr. Williams.

24 MR. WILLIAMS: I'm Robert Williams from  
25 San Jose. My whole trip today has been worthwhile

1 to hear that last exchange, because I do  
2 appreciate the difficulty that the Commission  
3 faces.

4 I think one clarification needs to be  
5 made in the Act that it appears to me, correct me  
6 if I'm wrong, Chairman Laurie, that the Commission  
7 feels obligated to set no more than a 12-month  
8 schedule, if they do extend the schedule, there  
9 somehow seems to be the mindset, well, we've  
10 fooled around for four months or six months or ten  
11 months, but it should be 12 months from here on  
12 out.

13 Now, I allege that the whole regulation,  
14 if it were structured to offer 12, 24, 36 months,  
15 depending on the degree of standardization and the  
16 degree of site control and a few other things,  
17 that then there wouldn't be this constraint to  
18 somehow always go forward with an impossible 12-  
19 month schedule from today.

20 So, I originally didn't know how to  
21 react to this proposal for project changes. And I  
22 think it could turn out to be helpful to you. So  
23 I would just urge that you, in parallel with this  
24 recommendation for project changes under 3, get  
25 away from this mindset that it must be -- that the

1       only acceptable project schedule is a 12-month  
2       schedule.

3               PRESIDING MEMBER LAURIE:   Thank you,  
4       sir.   Anybody else?   Mr. Harris.

5               MR. HARRIS:   Jeff Harris.

6               PRESIDING MEMBER LAURIE:   Mr. Harris,  
7       this is Mr. Williams.   Perhaps you two know each  
8       other.

9               (Laughter.)

10              MR. HARRIS:   Mr. Williams and I are  
11       actually good friends.   We talked beforehand, it's  
12       a very civil relationship, I'm glad to say  
13       actually.   And I'm sincere, and I mean that, Bob.

14              MR. WILLIAMS:   And that is true.

15              MR. HARRIS:   Boy, there's so much love I  
16       got thrown off track here.

17              (Laughter.)

18              MR. HARRIS:   I guess I'm representing a  
19       different point of view here, actually the same  
20       point of view as Karen.

21              The concern we have here is what is a  
22       change, and what is a mitigation measure.   And I  
23       think that's the crux of the problem as we see it.

24              If an applicant comes in with a project  
25       change, if they go from being a geothermal power

1       plant to a natural gas-fired power plant, I think  
2       we can all agree that the applicant has changed  
3       the project.

4               The not so bright line comes into effect  
5       when we're dealing with the question of what is  
6       mitigation for impacts. And for me that's the  
7       biggest concern I have about this recommendation.  
8       I don't see a clear standard of review in the  
9       document, because I don't think one exists in law,  
10      actually. I think it's a very fact-based question  
11      as to what is a mitigation measure and what is a  
12      project change.

13              We could spin out different examples,  
14      but last time I got beaten up so bad I don't want  
15      to do that. But, the example I gave about going  
16      from geothermal to natural gas, that's obviously a  
17      project change.

18              If an applicant has a wet cooling system  
19      and it converts to dry cooling system, I think  
20      that -- actually I think that happened in one  
21      case -- is that a project change or is it a  
22      mitigation measure? I would submit that's a  
23      mitigation measure because what you're trying to  
24      mitigate there are the impacts associated with  
25      discharge.

1                   Now, under this proposal would that be  
2                   considered a project change? Now, I don't think  
3                   the answer is clear. So that is the major concern  
4                   that I have here, is determining the difference  
5                   between a project that's being changed, and a  
6                   project that's being mitigated.

7                   And I think that the Commission can tell  
8                   the difference. And I think that that's a very  
9                   fact-specific question.

10                  So based upon that we would recommend  
11                  that you not proceed forward with this  
12                  recommendation.

13                  PRESIDING MEMBER LAURIE: Thank you.  
14                  Question.

15                  MR. HARRIS: Sure.

16                  PRESIDING MEMBER LAURIE: Both CEQA and  
17                  Subdivision Map Act and Government Code have time  
18                  deadlines in it, do they not?

19                  MR. HARRIS: Yes, sir.

20                  PRESIDING MEMBER LAURIE: Let's suppose  
21                  for a moment that I'm a residential developer and  
22                  I'm putting in a hundred lots with a septic  
23                  system. And I do my environmental analysis and  
24                  it's determined that there's real drainage  
25                  problems here. And my EIR says, boy, it's really

1       gong to be tough to mitigate that.

2               So, I go okay, I'm going to change the  
3       project and I'm going to put in sewer.

4               What should the jurisdiction do as far  
5       as their time obligations go?

6               MR. HARRIS: I don't disagree with you  
7       that there has to be an analysis of that change.  
8       You're going to have to figure out, first off, why  
9       are they making the changes. Is the change being  
10      made to mitigate impacts? Are you going to have a  
11      cleaner project, I guess the sanitation system  
12      that's a good example, by making that change?

13              I think this regularly occurs under CEQA  
14      in the development field. I think you see this  
15      all the time that boards of supervisors and city  
16      councils where someone will come in with a great  
17      idea. At that point usually there's a week or so  
18      break and they come back and there's a decision on  
19      the project.

20              PRESIDING MEMBER LAURIE: There's  
21      sometimes more than a week, Mr. Harris.

22              MR. HARRIS: Depending on the scale of  
23      what you're changing.

24              PRESIDING MEMBER LAURIE: Yeah, that's  
25      right.

1                   MR. HARRIS: If you already have an  
2                   infrastructure in place for a sewer hookup, for  
3                   example, maybe it's a no-brainer. If you have to  
4                   go across green fields for 20 miles with a 42-inch  
5                   sewer line, that's a different issue.

6                   So, again, I think it's a very fact-  
7                   specific determination. And I also agree with the  
8                   comments of Ms. Edson that the Commission has the  
9                   right and the authority, and probably the  
10                  obligation, to tell folks that if they want to  
11                  hold their one year, they may get a negative  
12                  determination. And I applaud you for doing that.

13                  I would also ask that in making those  
14                  kind of determinations that you continue to do  
15                  what you have done, which is take a look at who  
16                  the applicants are and whether they've been  
17                  forthright with you and how they've dealt with  
18                  you, and make those decisions on those bases, as  
19                  well.

20                  PRESIDING MEMBER LAURIE: Thank you. Mr.  
21                  Williams, you've already spoken twice on this  
22                  issue. You can speak a third time, but it's now  
23                  five minutes after 2:00.

24                  MR. WILLIAMS: I'll be very brief.

25                  PRESIDING MEMBER LAURIE: We're going to

1 have to start quickening the pace.

2 MR. WILLIAMS: It touches on the  
3 definition of mitigation of an impact. And the  
4 flip side of that is should the applicant have  
5 known.

6 Let's go to your septic tank analogy.  
7 If the developer has bought a field which is  
8 nearly a bog; he got a good price on it and he  
9 wanted to put septic tanks in. And, oh, he's  
10 greatly surprised now when the zoning board, or  
11 whoever passes on the septic system, says, that's  
12 not going to drain, we're going to have sewage  
13 water in everybody's backyard, we got to have  
14 sewers. Oh, my goodness, now I'm putting in a  
15 sewage system for mitigation.

16 Same thing at a power plant. The  
17 applicant has come in with wet cooling towers.  
18 There's a big cloud of steam. We're going to ask  
19 the applicant to change to dry cooling. Should  
20 the applicant have known that wet cooling would be  
21 a big mess there? Tough call.

22 But I think that there is, as several of  
23 the earlier people testified, there does need to  
24 be a definition on when one is adopting mitigation  
25 of impacts, but there also needs to be some



1 recognition that the applicant is often pushing  
2 the envelope, pushing the system, often to the  
3 breaking point, and then crying foul when he  
4 implements his mitigation.

5 Thank you.

6 PRESIDING MEMBER LAURIE: Thank you,  
7 sir. Anybody else? Thank you.

8 Mr. Tooker.

9 DR. TOOKER: Yes, item 4 deals with  
10 eminent domain. The Committee agrees with many of  
11 the participants at the December 13th hearing that  
12 the issue of eminent domain requires further  
13 study. We believe that the full Commission should  
14 bring the issue to the attention of the  
15 Legislature.

16 Before the Committee and Commission can  
17 take a final position on this issue, more needs to  
18 be known on the relationship between eminent  
19 domain and the issues pertaining to the system  
20 reliability.

21 Because of the complexity of the issue  
22 and the multiplicity of positions on this subject,  
23 further discussion with all the stakeholders,  
24 including members of the public, are necessary and  
25 desirable.

1                   Therefore, the Committee has no  
2       recommendation at this time.

3                   PRESIDING MEMBER LAURIE:   Comments?   Mr.  
4       Harris.

5                   MR. HARRIS:   Jeff Harris on behalf of  
6       Calpine/Bechtel.

7                   A couple of things.   First I want to  
8       make one point and then make a suggestion.   The  
9       point is as you've already figured out that this  
10      is a real world problem.   There are projects that  
11      are either out there or will be out there soon  
12      that are having these problems about obtaining  
13      rights-of-way in particular with linears.

14                  And I think it's a much bigger issue  
15      with the linear facilities.   Rights-of-ways for  
16      gas lines, transmission lines, what-have-you.  
17      Acquiring those rights-of-way is becoming an  
18      issue.

19                  And it really fundamentally affects the  
20      ability of a power plant to get to the market.  
21      Obviously if you don't have a transmission route  
22      you're not going to get to the market.   So it's a  
23      real world problem and I think it's one that's  
24      developing.

25                  That's my observation.   My suggestion

1 would be that this item number 4 really does go  
2 hand-in-hand with your item number 8 that relates  
3 to transmission line jurisdiction.

4 And the way I would link those things  
5 together -- so I guess 4 gets us halfway to 8 --  
6 the way I'd link those things together, whatever  
7 state agency ultimately ends up with transmission  
8 line jurisdiction ought to have it in its bag of  
9 tricks, eminent domain authority.

10 So I guess what I'm suggesting is that  
11 you fold that possibility into the discussion on  
12 item 8.

13 PRESIDING MEMBER LAURIE: Thank you.

14 MS. EDSON: Karen Edson for IEP. I want  
15 to echo Mr. Harris' comments and just indicate  
16 that this is a critical issue, as the Committee  
17 has indicated in its notice. And it's critical to  
18 making sure that approved power plants can indeed  
19 be built and begin to deliver power in California.

20 I want to suggest another consideration  
21 here, as well, though, and it may indeed be  
22 something that will allow us to move forward on a  
23 timeline consistent with the rest of these issues.  
24 And that is that investor-owned utilities hold  
25 eminent domain powers for many of these linear

1 facilities today.

2 And there may be ways, if we can get  
3 these stakeholders together and work this through,  
4 that there can be solutions worked out that allow  
5 these lines to be built even in the event -- I  
6 should just say for example, investor-owned  
7 utilities are obligated, under federal law, to  
8 interconnect the new generation facilities being  
9 sited by the Commission.

10 So there may be mechanisms we can do  
11 within existing law that allow eminent domain  
12 powers to go with these facilities.

13 So, I'd like -- or there may be small  
14 changes to the statute necessary to accomplish  
15 that. So, I'm hopeful that we can, through this  
16 collaborative process, maybe move quickly on this  
17 issue, because I do think it's critical to the  
18 industry.

19 PRESIDING MEMBER LAURIE: Yes, thank  
20 you, Ms. Edson. My preference would be to have a  
21 separate workshop and/or separate discussions on  
22 that issue immediately. We understand that that's  
23 an issue that we and everybody else needs to be  
24 addressing.

25 Comments. Mr. Alvarez.

1                   MR. ALVAREZ: Commissioner, Manuel  
2 Alvarez, Southern California Edison.

3                   I guess I would just echo your comment  
4 on a separate proceeding, a separate activity on  
5 this issue. Not only on the eminent domain  
6 question, but transmission and some of the land  
7 use issues are also going to cross paths there.  
8 So your suggestion of a workshop I think is  
9 appropriate or another proceeding.

10                  PRESIDING MEMBER LAURIE: Thank you. Go  
11 ahead.

12                  MR. WILLIAMS: I'm Robert Williams from  
13 San Jose. I would just like to remind the hearing  
14 board here -- are you a commission or a hearing  
15 board?

16                  PRESIDING MEMBER LAURIE: I am indeed  
17 a -- I am a Commissioner.

18                  MR. WILLIAMS: Yes, sir.

19                  PRESIDING MEMBER LAURIE: But I'm also  
20 Bob, or I'm also whatever my wife chooses to call  
21 me at any given point in time.

22                  MR. WILLIAMS: Thank you. In our  
23 earlier discussion on December 13th I thought we  
24 tried to make the point clear that -- I am not a  
25 lawyer and so I hope some of the lawyers in the

1 room will refer me to points where private, for-  
2 profit companies are given the right of eminent  
3 domain.

4 If there is a family of such situations,  
5 if IBM or General Motors or Bob Williams Computer  
6 Company can go take somebody's property by eminent  
7 domain to build a for-profit organization I would  
8 like to know the distinctions in law that permit  
9 that.

10 I think -- now, I'm distancing myself  
11 from the linear facilities argument. I happen to  
12 believe in the issue of eminent domain for the  
13 linear facilities.

14 But the entire issue of site banking, of  
15 having site control and site ownership obviates  
16 the need, gets rid of the need for eminent domain  
17 on all of these merchant power plants.

18 And while I've had too many other things  
19 to do to study all the gas transmission line and  
20 power transmission line maps in the state, my  
21 engineering intuition tells me there are hundreds  
22 if not thousands of sites where there are gas  
23 lines and transmission lines within the confines  
24 of a feasible site for one of these power plants.  
25 Because these plants are not big. They're only 20

1 or 30 acres.

2 So the issue of eminent domain for  
3 merchant power vendors, for-profit power sellers,  
4 is, in my mind, a nonstarter. Anybody who thinks  
5 we should go take my property in order to let XYZ  
6 Power Company make a fast buck has flunked civics  
7 101.

8 So, I don't see why this requires a  
9 separate workshop or separate discussions as far  
10 as item 4 is concerned.

11 Now, as far as item 8 is concerned, the  
12 linear facilities, there may be some extenuating  
13 circumstances. I haven't followed the latest  
14 trials and tribulations, but again my engineering  
15 understanding is that virtually every power right-  
16 of-way in the state is susceptible of massive  
17 upgrading.

18 There may be somewhat of a hue and cry,  
19 but the wires can be hung in such a way that  
20 there's very little additional change to the  
21 visual impact. I think research has shown there  
22 is very little electromagnetic impacts.

23 And so I don't see why the -- somebody  
24 needs to be more candid in this room and tell me  
25 why they cannot go out and buy land that they

1 control that sits astraddle both gas transmission  
2 and power transmission lines. I think that's a  
3 phony issue as stated here today.

4 PRESIDING MEMBER LAURIE: Thank you,  
5 sir. In fact, nowhere in the law does it allow  
6 for private taking of private land. All taking is  
7 in the hands of the government.

8 Who knows, where do the utilities get  
9 their taking authority? Is it under a PUC ruling?  
10 Or is there specific constitutional authorization  
11 for that? Does anybody know?

12 MR. ALVAREZ: I believe it's under the  
13 PUC ruling under the essential services doctrine  
14 in terms of just and reasonable acquisition of  
15 property for a public utility.

16 PRESIDING MEMBER LAURIE: Thank you. So  
17 what we have is the government has the right to  
18 take, and under its long-time-ago ruling has  
19 delegated its authority to the utilities.

20 In all other instances the taking of  
21 private property rests only in the hands of the  
22 government.

23 Sir.

24 MR. DiCAPO: Commissioner, my name is  
25 Bill Di Capo. I'm here representing Southern



1 Energy Delta. We are encouraged by the  
2 Committee's comments about wanting to conduct a  
3 workshop and studying this issue further.

4 We, in the new post AB-1890 era have  
5 been one of the first, probably one of the first  
6 entities that have been exposed to the other end  
7 of this process in the sense of being a party that  
8 has been sued to acquire a portion of a right-of-  
9 way for the benefit essentially of a private  
10 developer.

11 This is an area that, as you know, does  
12 touch upon constitutional rights, and there is a  
13 statutory scheme for eminent domain proceedings.

14 Our experience was interesting in the  
15 sense that we came into a proceeding by way of  
16 being served and an order for possession was  
17 obtained. And suddenly the condemning authority  
18 sought to change the process in the sense of  
19 saying that the statutory scheme under which the  
20 right to take -- we indicated that we would  
21 probably be raising a right to take issue in the  
22 proceeding -- and the condemning authority  
23 indicated to the court that this was an issue that  
24 they wanted to resolve very quickly.

25 Tried to bring a motion before the court

1 and have the issue resolved even before we, as a  
2 defendant, were entitled under the schedule to  
3 file our answer in the proceeding.

4 So, it is something that has profound  
5 effect. And we welcome the further discussion.

6 PRESIDING MEMBER LAURIE: Thank you,  
7 sir. Anybody else?

8 Next item, Mr. Tooker.

9 DR. TOOKER: Item 5, agency  
10 coordination. The Committee is recommending that  
11 all state and local agencies engaged in licensing  
12 process file their final comments within 180 days  
13 with the Commission Committee.

14 PRESIDING MEMBER LAURIE: Questions,  
15 comments?

16 MS. EDSON: Karen Edson, again. I  
17 thought about not coming up, but I thought I  
18 should come up at least once when I can say that  
19 we support the recommendation of the Committee.  
20 And we do support this recommendation.

21 And this is further, I think, where  
22 considering this issue is what took us to our  
23 recommendation that I mentioned earlier, that  
24 perhaps another step could be to try to eliminate  
25 some of the redundancy in the process, and have

1 the Commission rely upon the conclusions reached  
2 by local air districts and regional water boards.  
3 And perhaps the ISO, as well.

4 MR. ALVAREZ: Manuel Alvarez, Southern  
5 California Edison.

6 This particular item on this agency  
7 coordination was kind of one of the most  
8 interesting to think about. Because it reminded  
9 me of an issue that raised last year, and actually  
10 a couple of years. And that's the recreation of a  
11 permitting authority.

12 And I guess the nomenclature that was  
13 used at that time was a siting board made up of  
14 separate agencies, and who would all participate  
15 in the decision-making authority.

16 And basically that leads me to the  
17 question that in the Committee's recommendation I  
18 wasn't clear in terms of what the policy questions  
19 were trying to be resolved. Whether you wanted to  
20 just have coordination among the staff folks  
21 reviewing the application, or are you in fact  
22 recommending sharing decision authority for the  
23 approval of the facilities.

24 So I guess I make just the distinction  
25 between the coordination on the staff analysis and

1 the decision-making responsibility.

2 PRESIDING MEMBER LAURIE: Sharing  
3 authority? Was that an ill attempt at humor?

4 (Laughter.)

5 MR. ALVAREZ: Well, I guess that was the  
6 whole origins of where the new siting board or  
7 proposal for a new siting board would, in fact,  
8 surface.

9 PRESIDING MEMBER LAURIE: I think the  
10 intent of this section, and, Mr. Therkelsen,  
11 correct me if I'm wrong, is we needed to insure  
12 that the statutory mandate for operating within a  
13 specified timeframe, although it says the Energy  
14 Commission, really means the State of California.

15 And we want to insure that everybody  
16 understands that.

17 MR. ALVAREZ: I guess from my  
18 perspective that would imply some, you would have  
19 decision-making authority from other state  
20 agencies who would be involved in this activity.  
21 And their jurisdictions and interests would be  
22 preserved in the process.

23 MR. THERKELSEN: Well, I think what's  
24 intended there is a continued recognition that the  
25 Commission has exclusive permitting responsibility

1 and authority. That would be retained.

2 But a recognition that we need to have  
3 the agencies' comments and their position, their  
4 recommendations in a timely fashion so we can  
5 consider it in a timely manner. That was the  
6 objective.

7 MR. ALVAREZ: And in terms of what the  
8 other agencies' positions are, you're implying  
9 that they're either approval or disapproval of  
10 position recommended at the highest level of the  
11 agency?

12 MR. THERKELSEN: Well, primarily what we  
13 want to know is, is this project in compliance  
14 with your LORS. If it isn't, what is needed to  
15 bring it into compliance, what is your conclusion  
16 in terms of mitigation measures and the impacts.  
17 We want to know what their position is. We can  
18 then consider that in our deliberations.

19 MR. ALVAREZ: Thank you.

20 PRESIDING MEMBER LAURIE: Mr. Harris.  
21 Mr. Tooker, we do have a letter from Fish & Game  
22 dated December 28th. Will that be made part of  
23 the record?

24 DR. TOOKER: Yes. According to my  
25 understanding it is already part of the record. I

1 do have a copy here with me if you'd like me to  
2 provide it.

3 PRESIDING MEMBER LAURIE: Okay. I don't  
4 need to read it into the record.

5 MR. HARRIS: Jeff Harris of Calpine/  
6 Bechtel. I want to rise in support of this  
7 recommendation for the reasons set forth in the  
8 materials distributed. Thanks.

9 PRESIDING MEMBER LAURIE: Thank you,  
10 sir.

11 Next item.

12 DR. TOOKER: Yes, the next item, local  
13 land use decisions. The Committee is presenting a  
14 number of options for discussion by the parties  
15 regarding approaches to facilitate the decision-  
16 making in a proceeding where a local general plan  
17 change or reason is required. And to do that  
18 within the Commission's 12-month process.

19 PRESIDING MEMBER LAURIE: Okay. This is  
20 by far the stickiest issue in my view that we  
21 face. The issue was brought up at our very first  
22 workshop last year. No immediate solution  
23 determined.

24 I think the options, as presented,  
25 really do reflect some different opinions by both

1 interested parties and within the Energy  
2 Commission.

3 We all do feel, however, that it is an  
4 issue that needs to be addressed and resolved in  
5 some manner. I think there is a sense that the  
6 current circumstance is untenable. Thus,  
7 solutions are being sought.

8 Input, please.

9 MS. EDSON: Commissioner Laurie, thank  
10 you, again. This is Karen Edson for IEP.

11 IEP supports the second of the two  
12 options put forward in the Committee document. We  
13 think it's important here to have a document that  
14 the -- a complete environmental document that a  
15 local agency can rely upon for its review, and  
16 also to accomplish that to the extent possible  
17 within the 12-month permitting timeframe.

18 This alternative is one that we think  
19 can accommodate that. It would allow the local  
20 agency, as we understand it, to use the final  
21 staff assessment as their draft environmental  
22 impact report. Would not require separate  
23 Commission certification as is called for in other  
24 cases.

25 We have very serious problems with the

1 fourth and fifth options, the fourth one  
2 especially being one that we think essentially  
3 means that the Commission -- essentially  
4 eliminates the Commission's authority to override  
5 local agencies to the extent you require that as a  
6 matter of data adequacy. It tends, in our view,  
7 to be contrary to the intent of the Warren Alquist  
8 Act, which specifically allows the Commission to  
9 confront circumstances where there is not  
10 conformance with local ordinances and regulations.

11 We think it's also appropriate for the  
12 Commission to consider handling this issue  
13 administratively. It's not obvious to us that a  
14 statutory change is necessary in order to  
15 accommodate this alternative. And yet we think  
16 it's one that can be quite constructive when  
17 facing this complexity in the siting process.

18 DR. TOOKER: Karen, I have a question.  
19 You said that you'd felt that this option was one  
20 that would not require Commission certification of  
21 the document?

22 MS. EDSON: Well, that's how I read it.  
23 Is that different than you intended?

24 DR. TOOKER: -- said the second option  
25 would require the final staff assessment to be



1 certified by the Commission.

2 MS. EDSON: Oh, we had -- I'm sorry,  
3 it's simply my mis-reading.

4 PRESIDING MEMBER LAURIE: This is --

5 MS. EDSON: We -- I'm sorry.

6 PRESIDING MEMBER LAURIE: Let me attempt  
7 to provide an explanation.

8 MS. EDSON: I appreciate that.

9 PRESIDING MEMBER LAURIE: There's two  
10 concerns. One, the local agencies want a  
11 certified document. Two, without a Commission-  
12 adopted document then what we have is a staff  
13 document. It's a staff recommendation.

14 Thus, that's the rationale, based upon  
15 those two problems, that provides the requisite  
16 for bringing it to the full Commission for, if you  
17 want to call it certification or something else,  
18 prior to it being enabled to be used by a local  
19 agency.

20 MS. EDSON: Can I ask a question of the  
21 Committee? The final staff assessment, of course,  
22 is the assessment, as I understand it, that is the  
23 subject of hearings by the Commission.

24 And so your formal public comment period  
25 has not occurred. So the document being certified

1 is a document that the local agency would then be  
2 releasing for public comment.

3 So, that's why, in my mind, the  
4 certification -- if you're certifying it for local  
5 review, I suppose specifically for local review, I  
6 don't know that that's particularly troubling.  
7 But to certify the document as the final document  
8 before the issues have been subject to hearing and  
9 public comment, I think, --

10 PRESIDING MEMBER LAURIE: Okay, so --

11 MS. EDSON: -- gets into a CEQA  
12 complexity that makes my head spin.

13 PRESIDING MEMBER LAURIE: -- your  
14 concern is that before evidentiary hearings this  
15 document is being given too much weight?

16 MS. EDSON: Well, no, no, I'm saying  
17 that the document that the Commission, as a result  
18 of the evidentiary hearings, could ultimately, I  
19 suppose, change the mitigation requirements  
20 associated with the project.

21 So I think what I'm really speaking to  
22 is the care -- what you're certifying the document  
23 for. And that if that's properly done, then I  
24 think this probably works. That's really the --

25 PRESIDING MEMBER LAURIE: Well, I can

1 tell you that there is a lot of diversity of view,  
2 I think, in this building about whether or not an  
3 FSA works. I had earlier indicated support for  
4 that concept. Other folks have a lot of different  
5 views for fear that we are prejudging a staff  
6 document.

7 MS. EDSON: Well, my thought is simply  
8 that if you're certifying this with a local agency  
9 to use as their draft environmental impact report,  
10 it's still serving the same purpose that it's  
11 serving in your process. It's a draft  
12 environmental impact report subject to hearing and  
13 subject to subsequent adjustment in response to  
14 public comment.

15 So you're not prejudging anything.  
16 You're simply authorizing the use of the document  
17 for purposes of the local review.

18 PRESIDING MEMBER LAURIE: Would you be  
19 in favor -- excuse me, would IEP be in favor of an  
20 amendment to Warren Alquist that eliminates the  
21 LORS requirement for local zoning requirements?

22 MS. EDSON: I should caveat this by  
23 saying that's not a question that IEP has taken up  
24 internally. As I've said before, over-ride is  
25 something that we hope never has to be confronted.

1                   In my experience, in most cases,  
2           conformance is achieved, and override does not  
3           have to be confronted. And we think it's  
4           appropriate for there to be a mechanism in order  
5           to work out those kinds of differences with local  
6           agencies.

7                   So we're not trying to change that  
8           dynamic or simply eliminate the obligation to try  
9           to meet those local concerns.

10                  I'd be surprised if we would seek that  
11           kind of -- support a change like that to the  
12           Warren Alquist Act. But I'd like to, if you're  
13           serious about pursuing that option, I'd like to be  
14           able to take it back to the --

15                  PRESIDING MEMBER LAURIE: Well, I --

16                  MS. EDSON: I didn't mean to suggest  
17           you're recommending that.

18                  PRESIDING MEMBER LAURIE: No. This is a  
19           very serious problem for us all.

20                  MS. EDSON: I understand.

21                  PRESIDING MEMBER LAURIE: The fact that  
22           we are, by law, mandated to find LORS compliance,  
23           and how in the world that fits in with our process  
24           is truly troubling.

25                  MS. EDSON: Well, and that's why we

1 think this issue is an important one to deal with.  
2 And we think that the second option that you've  
3 laid out here offers a framework that can permit  
4 that to occur.

5 I just think it has to be constructed  
6 very carefully so that you aren't diminishing the  
7 public's opportunity to comment on the draft  
8 environmental impact report that you're  
9 considering and that the local agencies are also  
10 considering.

11 DR. TOOKER: I'd like to provide one  
12 clarification, Karen. In helping to develop this  
13 concept staff had contemplated that there would be  
14 a more formal response to comments to the PSA  
15 included in such a final staff assessment, so it  
16 would better reflect a final EIR.

17 MS. EDSON: Well, I'd need to understand  
18 better what you had in mind.

19 MR. WILLIAMS: Karen, I have a question  
20 for you. Karen, if I may?

21 In the scenario that you described you  
22 envision the document going from the Commission  
23 back to the local agency for circulation for  
24 public comment.

25 Based on that public comment would you

1 expect the local agency then to identify  
2 mitigation measures that would be incorporated  
3 into the project?

4 MS. EDSON: I would presume that it  
5 would help inform their further consultation with  
6 the Commission in the Commission siting process.

7 MR. WILLIAMS: And then what's the  
8 status of the document at that point,  
9 environmental documentation? Does it come back to  
10 the Commission for final certification?

11 MS. EDSON: Well, that's -- now you're  
12 stretching my abilities, as someone who's not an  
13 attorney, I would want to bring a CEQA attorney in  
14 to talk about what the right characterization of  
15 that would be. I don't feel competent to answer.

16 MR. GRATTAN: John Grattan. One of the  
17 things that I'd like --

18 MR. WILLIAMS: Short break here.

19 (Pause.)

20 MR. GRATTAN: This is, indeed, a naughty  
21 issue. One of the things that I would like to  
22 point out in the Committee document is the  
23 discussion which indicates that there's nothing to  
24 prevent a local government from looking at its  
25 legislative work, looking at a general plan

1 amendment or a re-zone in front of the process.

2 And that is something I think a wise  
3 developer would do. Sometimes cautious attorneys  
4 say, wait a second, the Energy Commission here,  
5 you need a document from the Energy Commission,  
6 the local government can't produce it.

7 I think if this is the Committee's sense  
8 that a local government can produce an  
9 environmental document to support a re-zone or  
10 general plan amendment in front of the  
11 Commission's process, I think we're making some  
12 progress here, and I think if we're going to the  
13 Legislature with a solution that we ought to look  
14 at the front-end, at doing that on the front-end,  
15 and providing whatever CEQA justification is  
16 necessary on the front-end, rather than trying to  
17 fit the Commission's action into -- the  
18 Commission's decision into a local government  
19 action on the back-end.

20 PRESIDING MEMBER LAURIE: Are you  
21 supporting recommendation number --

22 MR. GRATTAN: I'm supporting  
23 recommendation number discussion. I'm supporting  
24 that conclusion that you've made under the  
25 discussion and I would support further work in the

1       Legislature on that end.

2               PRESIDING MEMBER LAURIE:   Okay, the  
3       challenge with the local government taking up the  
4       issue before the project even gets to the Energy  
5       Commission, is that the scenario that is --

6               MR. GRATTAN:   That's correct.   And to  
7       buttress that through CEQA amendments, as we need  
8       to.

9               PRESIDING MEMBER LAURIE:   Couple  
10      challenges with that.   In my experience local  
11      governments are hesitant to speculate when  
12      changing land uses.   So that if you're chairman of  
13      the board of supervisors and I come to you and I  
14      go, please support the change from ag to  
15      industrial so I can put my power plant in.   And it  
16      may or may not be controversial, doesn't matter.  
17      You and your colleagues are more often than not,  
18      not inclined to change that land use to allow my  
19      power plant if the discretion to approve that  
20      power plant is in the hands of someone else.

21              Because what happens if, for example,  
22      the Energy Commission says no.   Meanwhile you have  
23      your industrial zoned ag property.   And --

24              MR. GRATTAN:   I understand.   And I've  
25      experienced that.   I do think it is appropriate to



1 have that option. I think I represent developers,  
2 that a developer would rather enter the political  
3 process at the front end rather than --

4 PRESIDING MEMBER LAURIE: But you have  
5 that option.

6 MR. GRATTAN: -- at the back end.

7 PRESIDING MEMBER LAURIE: You have that  
8 option today, do you not?

9 MR. GRATTAN: That's -- I --

10 PRESIDING MEMBER LAURIE: You don't know  
11 how happy you would make us if you all walked in  
12 with no general plan zoning requirements.

13 MR. GRATTAN: I intend to do that  
14 whenever I can. But, the back end, I've worked a  
15 project here in Sacramento where it was done at  
16 the back end, and it worked fairly seamlessly, but  
17 it was the product of a memorandum of  
18 understanding that was hammered out by staff and  
19 county staff.

20 And, again, it would be much more  
21 preferable to go the front end, and anything that  
22 can provide a better basis in CEQA for a local  
23 government to make that decision, or make a  
24 conditional decision, and take a look at the  
25 Energy Commission's environmental process and

1 environmental document. And, you know, have that  
2 subject to ratification with that document.

3 But, I think coming in on the front end  
4 is the better approach.

5 PRESIDING MEMBER LAURIE: Mr. Williams.

6 MR. WILLIAMS: Thank you, Commissioner  
7 Laurie, Robert Williams from San Jose.

8 I think this is much easier than people  
9 are making it. First, there is an easy way in at  
10 the front end, it's called site the power plant in  
11 an industrial area where you do not have to amend  
12 the general plan or appeal to the zoning.

13 As one example, in San Jose industrial  
14 land is typically never -- is a factor of two  
15 cheaper.

16 PRESIDING MEMBER LAURIE: Please.

17 MR. WILLIAMS: All right, never mind.  
18 Let me be more general.

19 PRESIDING MEMBER LAURIE: Thank you.  
20 Northern California, maybe.

21 MR. WILLIAMS: In northern California,  
22 in and around Silicon Valley, the campus  
23 industrial is twice as expensive as heavy  
24 industrial.

25 My mind is boggled again by the staff

1       who apparently have prepared these first two  
2       options. That's why I was confused. They  
3       introduce the concept of public convenience and  
4       necessity again.

5               Now, I think the whole idea of the  
6       Energy Commission making a finding of public  
7       convenience and necessity for a for-profit power  
8       company to me boggles the mind. So I --

9               PRESIDING MEMBER LAURIE: Let me  
10      interrupt there, Mr. Williams. That language  
11      comes directly from statute.

12              MR. WILLIAMS: Does it? Okay. Well, I  
13      guess I'll have to rethink it and I'll --

14              PRESIDING MEMBER LAURIE: It comes from  
15      the most recent revisions through SB-110.

16              MR. WILLIAMS: Well, I'm at a loss when  
17      you tell me that, because it appears to me that if  
18      somebody has decided they will be unregulated and  
19      therefore pocket the profits from their power  
20      sales, they are just like General Motors or IBM or  
21      Ford, and the price that you pay to have the  
22      Commission or somebody act on your behalf in  
23      eminent domain is to have your profits regulated  
24      for the public good.

25              So, I don't buy any of these. I think

1       they're -- the second issue or second element --  
2       I'm leading up to the idea of endorsing the fifth  
3       option perhaps with some slight modifications.

4               I happen to think that if you do want to  
5       pursue a general plan amendment it does make sense  
6       to have an environmental impact report. And the  
7       thing that requires time is I think it's  
8       appropriate for local authorities to require that  
9       the environmental impact report be final. And my  
10      understanding is a preliminary staff assessment is  
11      only that, a preliminary staff assessment. No  
12      evidentiary hearings have been held.

13             And so your fellow Commissioners, who  
14      have not been part of that hearing, have no idea  
15      whether the PSA is correct or not.

16             So I think you have no choice but to  
17      continue at least to an FSA before there is any  
18      possibility that you have a suitable environmental  
19      report for decision-making.

20             That, of necessity, is going to take  
21      some time, and I think is going to require both  
22      the evidentiary hearings, and then you might as  
23      well have the certification of the entire  
24      California Energy Commission.

25             So, in my opinion, something like the

1 fifth option where you basically take a final  
2 staff assessment and have it certified by the  
3 Commission. And it marches off to the city to  
4 determine whether or not the general plan will be  
5 amended, is a perfectly logical public process.  
6 It just does not have the Energy Commission giving  
7 the final approval.

8 And it seems to me the Energy Commission  
9 could then issue its report approving the project  
10 conditioned upon local changes to the general plan  
11 for industrial zoning.

12 But any of the other processes, for  
13 example you folks moving in and holding hearings,  
14 amount to establishing this de facto industrial  
15 zone.

16 And I think all of us have some belief  
17 in the public process and public participation;  
18 and none of us would want to see local zoning done  
19 by a Commission in Sacramento.

20 So I think some improvements to the  
21 fifth option are the viable path here, thank you.

22 DR. TOOKER: I have one clarification.

23 PRESIDING MEMBER LAURIE: Sure.

24 DR. TOOKER: Why, in the supporting  
25 fifth option you were suggesting the use of the

1 FSA and not the use of a Presiding Member's  
2 Report, which would benefit from including  
3 testimony on environmental issues from the  
4 parties.

5 MR. WILLIAMS: Thank you for injecting  
6 that. That would probably be even better. I  
7 appreciate that inquiry, and that shows my lack of  
8 detail familiarity still. Thank you.

9 PRESIDING MEMBER LAURIE: Additional  
10 comments? Mr. Harris.

11 MR. HARRIS: Thank you. Jeff Harris. A  
12 couple things. I'm going to start with the basic  
13 proposition that we're all familiar with, which is  
14 that the Energy Commission's process is a CEQA-  
15 equivalent process. That's now a settled question  
16 of California law. So we start with that basic  
17 proposition.

18 I want to support option 2 and  
19 specifically the use of the final staff assessment  
20 as the CEQA equivalent of the final EIR. I have I  
21 think about five points to make on this, and then  
22 I will make myself available for questions.

23 The final staff assessment -- you can  
24 ask questions along the way, obviously too, I  
25 didn't mean to suggest that you couldn't interrupt

1 me.

2 But the final staff assessment is a  
3 document that contains information that most looks  
4 like a traditional EIR in the CEQA setting. That  
5 document has a discussion of what the project is,  
6 what the project's potential impacts are, if  
7 they're unmitigated, and what the potential  
8 impacts of the project are with mitigation.

9 So, the final staff assessment has the  
10 information that I think the public is generally  
11 familiar with in seeing in the EIR setting.

12 Proposed decisions, on the other hand,  
13 is another document that's been considered, look  
14 more like decisions. They don't have the detailed  
15 analysis of the impacts. They do have a detailed  
16 discussion of conditions and how it got to that  
17 point. They don't have the detailed analysis of  
18 the final staff assessment, so it's that basic  
19 first point.

20 I think if you look at our process that  
21 we go through here, what looks like an EIR? I  
22 think it's clearly the final staff assessment. So  
23 I think that helps the public understand the  
24 process.

25 Second, we talk about certifying this

1 document. I think the document does need to be  
2 certified by the Commission, and I know this is a  
3 sticky issue for folks, as well.

4 But let's be clear about what that  
5 certification is. It's a certification of an  
6 environmental document. It's not a certification  
7 of a decision in the power plant siting case. And  
8 that's an important distinction to make.

9 PRESIDING MEMBER LAURIE: Let me  
10 interrupt you there. The term certification is a  
11 word of art in CEQA. And if we're doing CEQA-  
12 equivalent, are we free to impose a different  
13 definition to the term certification, or in fact,  
14 not use that term at all?

15 MR. HARRIS: I'd say you have a lot of  
16 latitude here because you are a CEQA-equivalent  
17 process, as the resource agency has said. And  
18 that's actually my fifth point, which ties back.

19 I think a lot of this -- I think this  
20 entire issue could be dealt with administratively  
21 because you have flexibility as a CEQA-equivalent  
22 certified process, to go through the rulemaking  
23 and take a look at these issues.

24 So, I think in terms of clarity, if we  
25 wanted to make those issues extremely clear, you



1       could certainly do it in the rulemaking process.

2               And so, that's a long answer, I think I  
3       said yes. Did I answer your question on proposed  
4       changes to the -- the question was rulemaking on  
5       what. It would be a rulemaking taking a look at  
6       the Commission's siting regulations, Title 20.

7               The third point I wanted to make is I  
8       think the use of the final staff assessment as a  
9       final EIR really does parallel existing CEQA  
10      processes, and I'm kind of repeating myself a  
11      little bit here.

12              But the public is more familiar with  
13      CEQA; they're not as familiar with your CEQA-  
14      equivalent process.

15              Using the final staff assessment as the  
16      final EIR, with explicit notice in that document  
17      and anyplace else we can put it on the webpage or  
18      any other notices, that says this is your final  
19      EIR for this project, will give the public the  
20      notice they need to give us input at the time it's  
21      really required in the process here.

22              I know there's a concern on that same  
23      issue about what happens if after the project is  
24      certified, changes in the project. Something  
25      happens in evidentiary hearings. The Commission

1 comes back, wants to look at the project.

2 I would suggest to you again using the  
3 CEQA-equivalency analogy, that the standard of  
4 review there would probably be similar to the  
5 standard review used for recirculation of an EIR.

6 And now we're kind of back to our sewer  
7 line again. There's a standard in CEQA that -- I  
8 didn't bring my CEQA guidelines, I always feel  
9 like a geeky lawyer when I say something like  
10 that, but there is a standard in CEQA that talks  
11 about recirculation of documents.

12 I think maybe you could lift that same  
13 language to deal with this issue of what happens  
14 between certification and final Commission  
15 decision.

16 The fourth point is I think, although I  
17 understand Mr. Grattan's point about wouldn't it  
18 be nice on the front end to deal with this  
19 separately. Yes, that would be nice. It's not  
20 reality a lot of times.

21 I also think that there's a chance, if  
22 you advocate a system whereby you have a separate  
23 local environmental review process, that you do  
24 have an opportunity to create confusion for the  
25 public.

1                   Where do I, as a member of the public,  
2                   go to influence the outcome of this project. Is  
3                   there one setting or am I going to have to be in  
4                   two different environmental proceedings which may  
5                   be in parallel, or one may be ahead of the other.  
6                   I think there's a great potential for confusion  
7                   there. So we want to avoid --

8                   PRESIDING MEMBER LAURIE: In fact, I  
9                   don't think you can segregate them under CEQA.

10                  MR. HARRIS: I don't think so, either,  
11                  quite frankly. And I would suggest an approach  
12                  that would advocate that would, in a way, split  
13                  the project, so.

14                  And then finally the fifth one I've  
15                  already made. I think these changes can be done  
16                  administratively. I think you have plenary  
17                  authority in the Warren Alquist Act to promulgate  
18                  regulations. You've used that authority to  
19                  promulgate the regulations that you're currently  
20                  operating under.

21                  The program has been certified by the  
22                  Resource Agency of the CEQA-equivalent program.  
23                  So I think spelling out more clearly that the FSA  
24                  is the final environmental impact report  
25                  equivalent in the regulations, and spelling out

1 clearly in the regulations a standard for  
2 recirculation if there are changes between that  
3 certification and the final approval of the  
4 project, I think that can be done  
5 administratively. But I'm certainly willing to  
6 have the discussion with folks, as well.

7 I think that's all I have.

8 MR. ELLER: Mr. Harris, I have a  
9 question.

10 MR. HARRIS: I thought I was going to  
11 get away.

12 MR. ELLER: If staff's final staff  
13 assessment disagreed with some of the conclusions  
14 the applicant had raised, if there was a  
15 disagreement between the applicant and the final  
16 staff assessment, would you still support its use  
17 in certification by the Commission?

18 MR. HARRIS: You've gone right to the  
19 issue that, as an applicant, you start advocating  
20 something like that you have to ask yourself that  
21 question. What happens if the FSA makes a  
22 recommendation that you don't agree with. That's  
23 a real problem. And it could be a real problem  
24 politically for you, as well.

25 And quite frankly I don't have a

1 detailed good answer for you, Mr. Eller, as to how  
2 that would be handled, but that's the kind of  
3 thing I think would need to be developed in the  
4 rulemaking.

5           It may be that it would depend upon the  
6 issue. The FSA is going to have environmental  
7 information on issues that local governments don't  
8 want to know about, power plant efficiency, heat  
9 rates, those kinds of things are going to be in  
10 that FSA. They're not going to care about those  
11 kind of things. If it's an issue like that maybe  
12 it's not an issue that's important to the local  
13 government's decision.

14           If it's a more fundamental question like  
15 water or natural gas lines, those kind of things,  
16 environmental impacts, then it's a much tougher  
17 issue.

18           MR. ELLER: Thank you.

19           PRESIDING MEMBER LAURIE: Mr. Pittard,  
20 did you want to comment?

21           MR. PITTARD: Yes, sir, thank you for  
22 the chance. My name is Shawn Pittard, I work for  
23 Commissioner Michal Moore. And Commissioner  
24 Moore's been very interested in this issue, and in  
25 fact, promoted options 4 and 5. And would you

1       like me to explain some of the thinking behind --

2               PRESIDING MEMBER LAURIE:   Sir, it's  
3       entirely at your discretion.

4               MR. PITTARD:   -- those?

5               PRESIDING MEMBER LAURIE:   We're  
6       certainly interested in understanding Commissioner  
7       Moore's position.

8               First, kind of the context and the  
9       impetus for this, from Commissioner Moore's point  
10      of view, is that over time our process has gone  
11      from being an ER, NOI, then AFC process, you know,  
12      policy to basically alternatives, then to  
13      permitting.

14              And we're in a situation now, especially  
15      with restructuring, where we're becoming more of a  
16      permitting process.  And like you, he has local  
17      government experience, and often looks to that to  
18      inform his thinking.

19              What that means is he looks to the  
20      general planning process as the local equivalent  
21      of kind of the Energy Commission's past practices  
22      in establishing policies that would guide  
23      permitting.

24              So, absent policies to guide permitting,  
25      he's reluctant to abandon kind of the one policy,

1 land use policy document that exists in these  
2 processes, which are the local government's  
3 general plans.

4 So, in the case of options 4 and 5,  
5 they're exclusive of each other, and that's  
6 important to note. That in option 4 Commissioner  
7 Moore's opinion is that if we are, you know, set  
8 out, assuming the 12-month schedule must be  
9 maintained, then he would recommend that we change  
10 the data adequacy regulations in order to have a  
11 LORS conformance, or conformance with the general  
12 plan. That is if the 12-month schedule must be  
13 maintained.

14 However, if the 12-month schedule does  
15 not need to be maintained, then providing an 18-  
16 or a 24-month AFC process for projects that aren't  
17 in conformance with the general plan may be a way  
18 of solving that problem.

19 Because as we find, we have a 12-month  
20 schedule that depending upon the complexity of the  
21 project, the real time that it takes to complete  
22 the process varies. And to a certain extent the  
23 fifth option would be a way of acknowledging that  
24 and formalizing that process.

25 PRESIDING MEMBER LAURIE: Okay, can I

1 ask a question about that point. The fifth  
2 option. I am missing how extending the time out  
3 affects the problem of where in the process does  
4 the local government do its decision-making.

5 Extending it out certainly gives an  
6 acknowledgement to the fact that the local  
7 government process may be time consuming, and that  
8 we simply cannot meet our 12-month mandate.

9 But how does that affect our problem of,  
10 us being the Energy Commission, us being put in a  
11 position of reaching a final decision, then  
12 subjecting that decision to local government  
13 decision-making?

14 MR. PITTARD: I think in that case  
15 Commissioner Moore would agree again with you that  
16 that's our particular "Catch 22" that we've been  
17 experiencing.

18 But I think the fifth option kind of  
19 works together with the third option at that  
20 point, which is that an Energy Commission document  
21 be certified. You would still need to address  
22 that question.

23 That, as opposed to using the FSA as the  
24 Commission's environmental document.

25 PRESIDING MEMBER LAURIE: Mr.



1       Therkelsen, can you go over what the third option  
2       means? We have our evidentiary hearing. And my  
3       understanding of the third option is you complete  
4       your evidentiary hearing, you then adopt an  
5       environmental document, but you do not adopt the  
6       PMPD if there's local government decision-making  
7       required.

8               And that document that you adopt is this  
9       environmental document. Is that what option 3 is?

10              MR. THERKELSEN: That's correct.

11       Basically after you're done with the evidentiary  
12       hearings you have two routes you can go on a flow  
13       chart.

14              If there is a local agency determination  
15       on land use that is desired, then you produce this  
16       environmental full disclosure document that the  
17       Commission certifies, and the local agencies or  
18       water resources control board or whomever else you  
19       want to have make a decision can use for their  
20       certified environmental document.

21              The Committee then, on a parallel path,  
22       is also working on the PMPD which actually has the  
23       conditions of certifications, the full decision-  
24       making framework.

25              Those two parallel processes then would

1       come together again after the local agencies or  
2       other state agency has used the environmental  
3       document to make their determinations.

4               MR. PITTARD:  And I believe Commissioner  
5       Moore's opinion is that there would be something  
6       akin to the third option, rather than literally  
7       the third option.  And perhaps the PMPD, itself,  
8       may be the more -- may be the appropriate document  
9       to use as the environmental disclosure document.

10              PRESIDING MEMBER LAURIE:  That's Sutter,  
11       right?

12              MR. PITTARD:  It's very similar to the  
13       situation that we experienced in Sutter.  And one  
14       of the things that Commissioner Moore wonders  
15       about, and we tried, you know, we've gotten some  
16       legal opinions on this in our siting committee  
17       meetings, is well, what do the locals really  
18       require.  What does local government need from the  
19       Energy Commission in order to make its  
20       discretionary land use decision.

21              And in different cases different  
22       jurisdictions have asked for different things.

23              PRESIDING MEMBER LAURIE:  Okay.  
24       Anything else you wish to offer at this point?

25              MR. PITTARD:  No.  I mean it's tempting,

1 but no, thank you.

2 (Laughter.)

3 PRESIDING MEMBER LAURIE: Okay, thank  
4 you for your input on that.

5 Ladies and gentlemen, let's take a 15-  
6 minute break. We have more work to do today. See  
7 you back here at 3:15.

8 (Brief recess.)

9 PRESIDING MEMBER LAURIE: Item 7,  
10 repowering.

11 DR. TOOKER: Item number 7, repowering  
12 jurisdiction. The Committee is recommending that  
13 the Commission be given jurisdiction over all  
14 repowers that constitute 50 megawatts or more,  
15 regardless of whether that's a net increase in  
16 megawatts.

17 PRESIDING MEMBER LAURIE: And describe  
18 the rule today.

19 DR. TOOKER: As I understand it, the  
20 rule today is that there has to be a net increase  
21 in generating capacity at a site for the  
22 Commission to have jurisdiction over the project  
23 change.

24 If you have a project currently is,  
25 let's say 200 megawatts, and it's revised to build

1 a new project that is 200 megawatts, and that  
2 involves a new project we don't have jurisdiction  
3 over it.

4 PRESIDING MEMBER LAURIE: Okay. Public  
5 input on the question. This gentleman.

6 MR. WILSON: Thank you, Commissioner  
7 Laurie. My name is Stu Wilson with California  
8 Municipal Utilities Association.

9 PRESIDING MEMBER LAURIE: Thank you.

10 MR. WILSON: Briefly I'd like to say as  
11 sort of a general comment, that unfortunately we  
12 did file written comments on the staff's draft  
13 proposal, I think it was a few days after the  
14 hearing the last time, and I'm afraid I'm going to  
15 have to say as far as I can tell I think we have  
16 zero impact on the thinking of the Committee with  
17 regard to these issues.

18 But I chose today not to comment on each  
19 of them. We have maybe some less substantial  
20 concerns about many of these issues, but a couple  
21 of them at least I thought merited a statement  
22 today.

23 PRESIDING MEMBER LAURIE: Thank you.

24 MR. WILSON: And I believe that the  
25 repowering is one of those issues.

1           The recommendation, frankly we just  
2       disagree with it. And the recommendation seems to  
3       be based on maybe four points that I read in the  
4       writeup here, and I'll just try to address them.

5           The first one being the intent of the  
6       Legislature. And I would just respectfully  
7       disagree with the assertion that the Legislature's  
8       intent was that repowering projects be within the  
9       jurisdiction of the Commission. And I don't think  
10      there's evidence necessarily to support that.

11          Furthermore, the courts have opined that  
12      in fact that was not the Legislature's intent.  
13      So, so much for that point.

14          The second argument is that the impacts  
15      of the repowering project are, in fact, similar to  
16      the impacts of a new plant on a green field site.  
17      And frankly I don't think that's normally the  
18      case.

19          Generally speaking, if you're repowering  
20      a project you're going to be replacing older  
21      equipment with newer equipment, and presumably  
22      less efficient equipment with more efficient  
23      equipment. And are likely to produce, actually  
24      reduce the impacts that are currently occurring at  
25      that site by building a new power plant. So I do

1 think that that's, in itself, not a good  
2 justification.

3 I suppose it is conceivable that some of  
4 the issues that are involved here could be issues  
5 of statewide concern, but if, in fact, we are, for  
6 practical purposes, actually mitigating impacts  
7 rather than creating them, it doesn't seem like  
8 that, in itself, is a justification to take  
9 jurisdiction of these projects.

10 Which leaves the fourth point which was  
11 the level playing field argument. And I'm not --  
12 certainly I'm not persuaded by that. I don't  
13 think it's necessarily a compelling argument for  
14 what is arguably a substantial expansion of the  
15 jurisdiction of the Commission.

16 And I'm not sure that if you believe  
17 that a repowering project is more likely than not  
18 to have a beneficial rather than adverse  
19 environmental impacts, why, in fact, it should be  
20 treated necessarily the same as a brand new  
21 project on a green field site.

22 So those would be my concerns about that  
23 recommendation.

24 PRESIDING MEMBER LAURIE: Okay. Thank  
25 you. Let me ask a question of staff. Under

1       today's rule if there's a repowering project and  
2       capacity is being added, local government has  
3       jurisdiction over that?

4               MR. THERKELSEN:  If you have an existing  
5       repowering facility and the net generating  
6       capacity on the site is increased by less than 50  
7       megawatts, then, yes, local governments would have  
8       jurisdiction over that, unless the project was  
9       owned by an investor-owned utility, in which case  
10      the CPUC would have jurisdiction over it.

11             PRESIDING MEMBER LAURIE:  And if net  
12      capacity is increased by more than 50 megawatts?

13             MR. THERKELSEN:  Then the Energy  
14      Commission would have jurisdiction, under any  
15      case.

16             DR. TOOKER:  one of the things I think  
17      it's important to understand is that when these  
18      projects -- when issues in these projects are  
19      revisited, such as discharge, water discharge, the  
20      regulatory scheme in which those are evaluated in  
21      the current environment may be significantly  
22      different from and represent a different type of  
23      issue than it might have originally when it was  
24      permitted 20 years ago.

25             PRESIDING MEMBER LAURIE:  Thank you.

1 Next, please.

2 MR. ALVAREZ: Manuel Alvarez, Southern  
3 California Edison.

4 I guess this is another issue where  
5 initially I thought I was confused until Mr.  
6 Tooker gave me his explanation, and I guess my  
7 suspicion was correct, the Commission wanted to  
8 expand its jurisdiction over current facilities it  
9 doesn't have responsibility for.

10 I guess the basic issue related to the  
11 issues you were discussing previously, and that's  
12 the land use question. Existing facilities have  
13 already made their land use decision in terms of  
14 the appropriateness of a power plant on that land.  
15 A repowering does not change that basic decision.

16 Other environmental issues, Mr. Tooker  
17 talked about discharge, would, in fact, have to  
18 comply with whatever the current standard is when  
19 the repower is undertaken. If it's undertaken and  
20 there's no net megawatt increase over 50  
21 megawatts.

22 Our initial position at the time when  
23 this thing was first proposed that we didn't  
24 recommend the Commission expand its jurisdiction,  
25 and we still hold to that recommendation.



1                   PRESIDING MEMBER LAURIE: Thank you,  
2                   sir. Next.

3                   MS. EDSON: In the interests of not  
4                   being redundant I'll simply say that IEP opposes  
5                   this recommendation.

6                   PRESIDING MEMBER LAURIE: Thank you.  
7                   Mr. Williams.

8                   MR. WILLIAMS: Robert Williams from San  
9                   Jose. It comes as no surprise that I support this  
10                  recommendation. And let me just restate the  
11                  reasons, some of them have been mentioned earlier.

12                 I think a repowered plant has a  
13                 significant advantage for an applicant. He has  
14                 the site and site control, and presumably he's  
15                 nearly in the ballpark on zoning in terms of  
16                 height limits and use, typically industrial M4 in  
17                 the scheme of things I'm used to.

18                 So he should be happy. He's, in my  
19                 view, two-thirds of the way home. If he would  
20                 repower the site with a plant that's already been  
21                 built at another location it's a standard, or very  
22                 nearly a standard plant.

23                 And so this would be my classic case of  
24                 a facility that could be initiated with an AFC on  
25                 a 12-month schedule.

1                   Now, let me remind you of the possible  
2       abuses. A 50-megawatt plant using wet cooling can  
3       make cooling tower bottoms that are highly  
4       concentrated and toxic materials. Somebody needs  
5       to look into this. You can't just let the  
6       applicant proceed willy nilly.

7                   There is this mindset that somehow  
8       because we're meeting air quality limits and that  
9       nothing else has changed needs to be erased.  
10      There can be considerably greater thermal  
11      pollution effects. Particularly if wet cooling is  
12      used.

13                  So, this is an excellent idea. And the  
14      way power plant technology works now, the 50  
15      megawatts is too big a number to proceed  
16      unregulated.

17                  At this point I'm not going to quibble,  
18      particularly with the 50, but indeed I think the  
19      Commission should have jurisdiction over  
20      repowering; and it should have that jurisdiction  
21      for all the reasons stated.

22                  If the applicant used good common sense,  
23      this should be a slam-dunk on siting and  
24      proceeding because of his capability to use both  
25      the standard plant and a site that he already has

1 site control.

2 Thank you.

3 PRESIDING MEMBER LAURIE: Thank you.

4 Mr. Therkelsen, when we talk about repowering and  
5 having the Commission assume jurisdictional raw  
6 repowering, this over plants that we had original  
7 jurisdiction over?

8 MR. THERKELSEN: This would include any  
9 plant whether we had jurisdiction over it  
10 originally or not.

11 PRESIDING MEMBER LAURIE: Okay, thank  
12 you. Any additional comments?

13 The next item.

14 DR. TOOKER: Item number 8 is the  
15 transmission line jurisdiction, which we have  
16 discussed a little bit earlier, in which the  
17 Committee believes that the siting authority for  
18 large transmission lines should be given to the  
19 Energy Commission.

20 PRESIDING MEMBER LAURIE: I want to make  
21 it clear that this is permitting over transmission  
22 lines. There is no reference, or no nexus --  
23 strike that. There is not intended to provide any  
24 jurisdiction in the Energy Commission over  
25 transmission planning.

1 DR. TOOKER: Correct.

2 PRESIDING MEMBER LAURIE: Different  
3 issue. Consolidation of transmission line siting  
4 permitting jurisdiction to the Energy Commission.  
5 Comments. Currently in the hands of the Public  
6 Utilities Commission, except if it's interstate,  
7 and then FERC gets it, is that correct?

8 MR. THERKELSEN: That's correct, and the  
9 other entity that is involved with permitting  
10 power plants are the municipal utilities, if they  
11 currently have jurisdiction, and the Western Area  
12 Power Administration if they happen to have  
13 jurisdiction.

14 PRESIDING MEMBER LAURIE: Okay, so the  
15 munis permit their own lines?

16 MR. THERKELSEN: That's correct.

17 PRESIDING MEMBER LAURIE: Okay. And  
18 what would the intent be in dealing with the  
19 municipal?

20 MR. THERKELSEN: In terms of the broad  
21 concept here laid out in number 8, it would be  
22 regardless of what the ownership was, all lines  
23 would be under that one consolidated transmission  
24 siting jurisdiction.

25 PRESIDING MEMBER LAURIE: Thank you.

1 Sir.

2 MR. WILSON: Commissioner Laurie, just  
3 for the record, Stu Wilson with the California  
4 Municipal Utilities Association.

5 It may come as a shock to hear that  
6 we're opposed to this regulation, as well.

7 (Laughter.)

8 MR. WILSON: To be honest with you I'm  
9 not sure that our members are going to build a lot  
10 of transmission lines, but as a matter of sort of  
11 local authority, we certainly at the present time  
12 haven't seen arguments which are compelling enough  
13 to justify sort of local elected officials  
14 surrendering what is a significant piece of  
15 authority that they currently have.

16 We fully understand that there is a new  
17 paradigm here, and that the independent system  
18 operator is going to be the focus of transmission  
19 planning and fully understand that, you know,  
20 that's the process that all the review of at least  
21 the power system is going to have to be done in,  
22 in certainly the prospective sense.

23 But once that process has been completed  
24 it doesn't seem really compelling to us that the  
25 siting of a facility which is in conformance with

1 a transmission plan necessarily needs to be done  
2 in one particular agency. So we have some  
3 experience doing it.

4 PRESIDING MEMBER LAURIE: Thank you,  
5 sir.

6 MR. ALVAREZ: Manuel Alvarez, Southern  
7 California Edison.

8 I think as you know our original  
9 position we didn't support the expansion of the  
10 Commission's jurisdiction to this area.

11 Your comments this morning,  
12 Commissioner, are, in fact, clarifying in terms of  
13 permitting, planning, responsibilities. But there  
14 still comes up a question, and I don't buy this  
15 issue of ISO coordination. I still believe it's  
16 somewhat vague. Not only is it ISO, but it's the  
17 coordination relationship between the Energy  
18 Commission, the PUC, FERC and ISO and the  
19 oversight board.

20 So there still needs to be some  
21 additional clarity on responsibilities between the  
22 entire regulatory environment.

23 You've made it clear that you were only  
24 discussing permitting, and from my perspective  
25 that's a clarity that we needed to have

1 understood.

2 Thank you.

3 PRESIDING MEMBER LAURIE: Thank you.

4 Additional comments? Mr. Harris.

5 MR. HARRIS: Jeff Harris just briefly  
6 again. We're looking for eminent domain authority  
7 at some point to help the linear facilities -- can  
8 consider that's part of the proposal.

9 MR. THERKELSEN: If I can ask, Jeff, was  
10 that a support or an oppose or a no opinion?

11 (Laughter.)

12 MR. HARRIS: I'm a lawyer so the  
13 answer's yes.

14 (Laughter.)

15 MR. THERKELSEN: That's what I wrote  
16 down.

17 MR. HARRIS: Bob, to be honest I'm not  
18 sure I fully understand all the implications. But  
19 I'd be glad to talk to you some more.

20 MR. THERKELSEN: That was clarifying.

21 MS. EDSON: I'm Karen Edson for IEP.  
22 IEP has supported single agency with  
23 responsibility for power plant and transmission  
24 siting for some time. We continue to support  
25 that.

1           I think it is helpful to know that we're  
2       looking only at transmission siting. It certainly  
3       simplifies our deliberations. And we'll need to  
4       talk further internally about the municipal  
5       implications, although that's something that we  
6       were certainly aware of when we originally reached  
7       this recommendation.

8           PRESIDING MEMBER LAURIE: Thank you.  
9       Additional comment? Thank you very much. Next  
10      item.

11           DR. TOOKER: Next item, number 9 is  
12      steamfield analysis for geothermal projects. The  
13      Committee's recommending deleting the requirements  
14      in the Warren Alquist Act for performing a  
15      steamfield resource adequacy analysis for the  
16      geothermal project.

17           PRESIDING MEMBER LAURIE: Thank you.  
18      Questions, comments on number 9?

19           MS. EDSON: IEP continues to support  
20      this recommendation.

21           PRESIDING MEMBER LAURIE: Thank you very  
22      much. Number -- I'm sorry, Mr. Williams, sorry,  
23      sir.

24           MR. WILLIAMS: I would just like to  
25      clarify that it's the intent that the



1 recommendation be to retain some responsibility  
2 for regulating geothermal power plants within the  
3 Commission. Is that the intent of the  
4 recommendation? Thank you.

5 PRESIDING MEMBER LAURIE: Yes, sir.  
6 Additional comment? Thank you. Next item.

7 DR. TOOKER: The next item number 10,  
8 multiple site analysis. The Committee's  
9 recommending amending the Act to prohibit  
10 applicants from filing on multiple sites in an  
11 application for certification.

12 PRESIDING MEMBER LAURIE: Okay, let's  
13 just make sure I understand. So that if I'm an  
14 applicant I have to say this project is going on  
15 assessor parcel number X, as opposed to assessor  
16 parcel number X or Y?

17 DR. TOOKER: Yes, the proposal has to be  
18 for a specific site, and then with alternatives  
19 considered.

20 PRESIDING MEMBER LAURIE: Comments? Mr.  
21 Williams.

22 MR. WILLIAMS: I'm Robert Williams from  
23 San Jose.

24 I'm trying to be concise here by just  
25 saying that I think every application should

1 contain more than one viable site. And that site  
2 should be under the control of the applicant. And  
3 one of the best ways to remedy the defects in the  
4 existing analysis of alternatives would be to  
5 require each AFC have multiple sites with a single  
6 plant design, a standard plant design.

7 Then there would be some assurance that  
8 the alternatives in the application are not fake  
9 alternatives just cooked up for show in the CEQA  
10 analysis. I allege that that occurs more often  
11 than not.

12 And so the recommendation here seems to  
13 state that -- could the staff clarify why they  
14 don't want multiple viable sites in a single AFC?

15 PRESIDING MEMBER LAURIE: Yeah. Well, I  
16 can tell you.

17 MR. WILLIAMS: Why?

18 PRESIDING MEMBER LAURIE: Because that  
19 doubles or triples the amount of analysis  
20 necessary when unnecessary analysis if the  
21 applicant is simply going to submit an application  
22 for more than one site, and then somewhere down  
23 the road say, okay, well, we're going to go with  
24 site number 2, so scratch out number 1 and 3.

25 Meanwhile we would have done the

1       analysis. We would have had to have hearings out  
2       in the neighborhoods where the plant was really  
3       never intended to go. And in our view it doesn't  
4       serve any purpose.

5               MR. WILLIAMS: Well, I mean, then in  
6       your view the alternative sites should be close  
7       enough together that all the hearings can be held  
8       in a single location?

9               PRESIDING MEMBER LAURIE: No, not  
10      necessarily. I think the alternative site  
11      analysis must meet the requisites of CEQA.

12              MR. WILLIAMS: Well, --

13              MR. THERKELSEN: Mr. Williams, I guess  
14      if I could comment. The purpose of the analysis  
15      of alternatives, under the California  
16      Environmental Quality Act, is if there is a  
17      significant environmental impact with the proposed  
18      project, meaning the applicant's proposal, then  
19      the agency, before it makes a decision yes or no  
20      on that project, has to determine whether there's  
21      an alternative that will lessen or eliminate that  
22      significant adverse impact.

23              And if there is an alternative that will  
24      eliminate that impact, then the agency is not  
25      allowed to permit the project unless it makes a

1 series of findings.

2 Under CEQA no agency is required to have  
3 an equal series of alternatives with equal level  
4 of site control. Under the National Environmental  
5 Policy Act, alternatives are treated differently.  
6 All alternatives in the federal process are equal,  
7 and their analysis is equal.

8 But the California Environmental Quality  
9 Act does not require that same type of analysis  
10 and that same perspective.

11 MR. WILLIAMS: Forgive me, that's why  
12 I'm a little confused, because most of my  
13 experience has been at the national level.

14 MR. THERKELSEN: Right, NEPA is  
15 significantly different in how it treats  
16 alternatives.

17 MR. WILLIAMS: Let me sit down and  
18 consider that new input, thank you.

19 PRESIDING MEMBER LAURIE: Okay, if you  
20 want to talk about this issue a little later,  
21 that's fine.

22 MR. WILLIAMS: Appreciate it.

23 PRESIDING MEMBER LAURIE: Ms. Edson.

24 MS. EDSON: I'm Karen Edson for IEP. I  
25 don't think IEP disagrees with the idea that their

1       applicant should be required to identify their  
2       proposed site for the project.

3               I guess my question is do we really need  
4       a change in the statute to address this. Or is  
5       this something that could be clarified in  
6       regulation.

7               MR. ALVAREZ: Manuel Alvarez with just a  
8       quick comment. I think the Committee's approach  
9       is reasonable given the new environment we're in,  
10      so it's a good move and good change.

11              PRESIDING MEMBER LAURIE: Additional  
12      comments? Thank you.

13              What we'd like to do at this time as we  
14      talk about the regs, it may very well be that as  
15      to many of these there will be no comment. So  
16      rather than take these one by one, my proposal  
17      would be to call on individuals who may speak to  
18      any and all -- one time -- that they desire.

19              Hearing no objection, is that the way  
20      you'd like to handle that, gentlemen?

21              MR. THERKELSEN: Yes.

22              PRESIDING MEMBER LAURIE: Okay, if it  
23      doesn't work, then I'm leaving and you're staying.

24              (Laughter.)

25              PRESIDING MEMBER LAURIE: Okay, --

1                   MR. THERKELSEN: Does that mean we get  
2                   to make the decision?

3                   DR. TOOKER: No, no, no.

4                   (Laughter.)

5                   PRESIDING MEMBER LAURIE: We have a  
6                   number of proposals to changing our regulations.  
7                   What I'll ask is for input as to those  
8                   recommendations.

9                   Feel free to speak to any or all as you  
10                  may desire.

11                  MS. EDSON: Karen Edson. I will try to  
12                  be very brief. IEP supports many of these  
13                  recommendations, the first three for example are  
14                  fine.

15                  The fourth recommendation with regard to  
16                  the ability of staff to meet with applicant and  
17                  others, I think is probably the one that merits  
18                  the most discussion.

19                  We're pleased to see that there will be  
20                  at least this level of information exchange  
21                  permitted by the Committee proposal. But as I  
22                  indicated earlier today, we think that the staff  
23                  should not be prohibited from negotiating  
24                  settlements. And perhaps by settlements you mean  
25                  is a term of art that I'm not fully appreciating.

1                   But we think to the contrary, it's  
2           important for this process to be something that  
3           can accommodate negotiations, if you will, outside  
4           of the hearing room. That obviously those  
5           negotiations and the result of those discussions  
6           will come before the Committee.

7                   The Committee and the Commission, they  
8           are the decision-makers. The parties to the case  
9           are not the decision-makers, including the staff.

10                  So, to constrain the discussions in this  
11           fashion, we think, is really inappropriate and  
12           contrary to having a process that lends itself to  
13           resolution of issues.

14                  PRESIDING MEMBER LAURIE: So would you  
15           support the ability of Homeowners Against Rotten  
16           Stinking Power Plants, Incorporated, to be able to  
17           meet with staff to offer their comments, their  
18           concerns?

19                  MS. EDSON: Yes. We have no objection.  
20           We think all parties need to be treated the same  
21           way in this process, and you know, I'm aware, for  
22           example, the stipulations that applicants and the  
23           staff and perhaps other parties will submit into  
24           these cases.

25                  And one concern I had when I read this

1 was that indeed this could preclude even that  
2 level of exchange between applicants and staff.

3 And I think reaching those -- there are  
4 a number of issues come up in all these cases that  
5 really aren't issues. They're issues that can be  
6 easily -- relatively easily resolved among the  
7 parties. And to let that occur, you know, outside  
8 of the formal hearing process, I think should be  
9 encouraged by the Commission.

10 PRESIDING MEMBER LAURIE: Mr.  
11 Therkelsen, currently parties can meet with one  
12 another?

13 MR. THERKELSEN: According to the  
14 regulations right now parties are not supposed to  
15 be meeting unless it's in a noticed forum. That's  
16 section 1710 of the regulations.

17 PRESIDING MEMBER LAURIE: They do that  
18 all the time, don't they?

19 MR. THERKELSEN: What other parties do I  
20 can't speak to. The staff --

21 AUDIENCE SPEAKER: We didn't know it was  
22 illegal.

23 MR. THERKELSEN: The staff has tried to  
24 abide by the regulations. It says we won't have  
25 meetings unless it's in a noticed forum.



1                   PRESIDING MEMBER LAURIE:   Okay.   Does  
2   staff --

3                   MS. EDSON:   I need to see the regulation  
4   you're referring to.   I'm sorry, I'm kind of  
5   surprised that the Commission has permitted these  
6   illegal activities --

7                   (Laughter.)

8                   PRESIDING MEMBER LAURIE:   What we don't  
9   know --

10                  MR. THERKELSEN:   Okay, section 1710,  
11   subsection (a), and again I'm not an attorney,  
12   says, quote, "All hearings, presentations,  
13   conferences, meetings, workshops and site visits  
14   shall be open to the public."

15                  And the staff, as a party, tries to make  
16   sure it doesn't have its meetings unless they're  
17   in a situation that is open to the public.

18                  There's two sections, actually, that  
19   deal with noticing, one is 1710 and the other one  
20   is 1718.

21                  PRESIDING MEMBER LAURIE:   Mr.  
22   Therkelsen, is it a good thing that parties A and  
23   B meet and have a latte and discuss issues, even  
24   if parties C and D are not invited, for example?

25                  MR. THERKELSEN:   If all parties act the

1 same I would say yes, that would be fine. The  
2 argument that people have used in the past against  
3 the staff in particular being allowed to meet  
4 individually with other parties is that the staff  
5 typically has a position of being the objective  
6 party, of presenting all of the information, of  
7 summarizing everything, and probably being fairly  
8 influential in presentation of the materials in  
9 the case.

10 PRESIDING MEMBER LAURIE: Can I put  
11 staff aside for --

12 MR. THERKELSEN: Right.

13 PRESIDING MEMBER LAURIE: I'm talking  
14 about the applicant and all intervenors.

15 MR. THERKELSEN: Um-hum.

16 PRESIDING MEMBER LAURIE: Let's say you  
17 had an intervenor as Homeowners Against Dirty  
18 Rotten Power Plants.

19 MS. EDSON: There is such a group as  
20 that.

21 (Laughter.)

22 PRESIDING MEMBER LAURIE: And you had  
23 another organization Homeowners For Responsible  
24 Power Plants, and they're both neighborhood  
25 groups. Do we truly believe that those people

1       should not be allowed to be talking to each other,  
2       And we want to prohibit them by law from doing so?

3               MR. THERKELSEN:   Want to and what the  
4       regulations say are two different things.

5               PRESIDING MEMBER LAURIE:   No, no, no, I  
6       don't care what the regulations say today, because  
7       we're interested as to what they should say.

8               MR. THERKELSEN:   In terms of process,  
9       the more entities talk, the more they exchange  
10      information, the more they get to know each other,  
11      the more they sit down face to face, the more  
12      you're able to get clarification of the issues,  
13      resolution of the things that aren't important and  
14      progress in the case.

15              In other words, the more communication  
16      that we have, I think the more expeditious and  
17      smoother things will go.

18              And we can focus on the critical issues  
19      in the hearings rather than every issue.

20              PRESIDING MEMBER LAURIE:   Okay.   Good  
21      start.   So, do we then think it is good that,  
22      keeping staff aside, that the parties be free to  
23      meet whenever they want?

24              MR. THERKELSEN:   In general I think that  
25      will aid the process.   There are some specifics

1       where one party and another party may make an  
2       agreement, and a third party may feel that they  
3       didn't have all the facts, and they would have  
4       liked to have had that opportunity to discuss with  
5       them.

6               And because they didn't have that, these  
7       folks have made an agreement, and they got their  
8       feet stuck in concrete, and now we have to go to  
9       the hearings to deal with this. Whereas if we had  
10      a public workshop, it was less formal and less  
11      contentious, maybe we could have dealt with that.

12             That's the only argument I can see  
13      against allowing parties to go off to the side and  
14      do things without all the parties having access to  
15      the discussion.

16             PRESIDING MEMBER LAURIE:  If -- I'm  
17      extending your thoughts a little bit, that's okay.  
18      If we start off with the presumption that it's a  
19      good thing for parties to be able to communicate  
20      and express concerns and work things out, then is  
21      the only reason that we don't include staff in  
22      there because a) we believe staff can be  
23      corrupted, or b) because we're concerned about  
24      public image and credibility?

25             MR. THERKELSEN:  Clearly I think the

1       latter is a concern. We want to make sure that  
2       the process is credible. The public feels that  
3       they've had access to all the discussions, all the  
4       analyses, all the facts. There's not a deal cut  
5       between staff and applicant, for example, or the  
6       staff and the Homeowners Against Dirty Rotten  
7       Power Plants, you know, off on the side, and that  
8       influencing the decision more than it should.

9               In terms of staff being corrupted, I  
10       haven't heard that argument, but I have heard the  
11       argument that the staff might enter into a  
12       stipulation, whatever it may be, without all of  
13       the facts and all the information.

14              PRESIDING MEMBER LAURIE: If that were  
15       to occur, staff is not the decision-maker,  
16       correct?

17              MR. THERKELSEN: That's correct, staff  
18       is not the decision-maker.

19              PRESIDING MEMBER LAURIE: So objection  
20       can be made to the Committee or the --

21              MR. THERKELSEN: Right, and that's why  
22       staff is pushed for just even the little  
23       lightening that we had right here in the noticing  
24       requirements, we are not the decision-maker.

25              PRESIDING MEMBER LAURIE: Okay. I have

1       expressed the view that -- strike that. I have  
2       publicly expressed the view that my preference is  
3       to see it opened up. That except for dealing with  
4       the decision-makers, everybody should be able to  
5       talk to everybody.

6               And if the applicant doesn't like  
7       conversations that neighbors have been having with  
8       staff, well, you know, during the course of the  
9       hearing you can complain about that, or you can  
10      talk about that.

11             You object to that, is that correct?

12             MR. THERKELSEN: No, I didn't say that.

13             PRESIDING MEMBER LAURIE: No, that's  
14      okay, I mean I'm interested in -- my understanding  
15      is that staff, and maybe everybody else in the  
16      building, doesn't feel comfortable with opening it  
17      up to that extent. Is that correct or not  
18      necessarily --

19             MR. THERKELSEN: I frankly think that  
20      sometimes the staff is more willing to open it up  
21      than others may be. I think we are more  
22      interested in pushing that envelope.

23             I think it's very important to balance  
24      the public credibility in the process. One of the  
25      things that lends credibility to our process helps

1 the public to feel like they are involved and  
2 included is the fact that they know that the staff  
3 isn't doing something that they're not allowed  
4 access to, because they view the staff as a  
5 critical player in the process.

6 And public credibility is important.  
7 Yes. I wouldn't mind seeing staff, I'd like to  
8 see staff have access to everybody, to be able to  
9 talk to everybody.

10 But, is that open access going to reduce  
11 the public credibility, the public trust in the  
12 process. And is that going to make the hearings  
13 more contentious, the decisions more likely to  
14 challenge? Is it worth doing that? I don't know.

15 PRESIDING MEMBER LAURIE: My sense is  
16 that regardless of the process citizenry will not  
17 trust governmental action, ex parte or no ex  
18 parte. Citizenry will often believe that deals  
19 are cut because that's what they're taught to  
20 believe.

21 MR. THERKELSEN: Based on feedback that  
22 I've gotten following siting cases, I don't think  
23 that's generally the case on the Commission's  
24 process. Generally even public that have opposed  
25 a project have felt they've gotten a square deal.

1       They've had a chance to be heard. And generally  
2       that staff and the Commissioners have listened to  
3       them. And that there hasn't been a deal cut  
4       behind closed doors.

5               Yes, there are individuals that you'll  
6       never hear that from. But the vast majority of  
7       the public, I think, that participate in the  
8       process, or even observe it casually, have  
9       expressed confidence in the process.

10              PRESIDING MEMBER LAURIE: Can you define  
11       meetings so as to allow nonsubstantive discussion  
12       with staff?

13              MR. THERKELSEN: The way that that  
14       regulation --

15              PRESIDING MEMBER LAURIE: Questions of  
16       clarification.

17              MR. THERKELSEN: Right. The way that  
18       regulation right now is currently interpreted and  
19       applied by the staff is that yes, if all we're  
20       talking about are procedural items, or all we're  
21       doing is getting clarification not dealing with  
22       substantive issues, we can have those discussions  
23       with any of the parties.

24              If we're dealing with a substantive  
25       issue it has to be done in public.



1                   What this change is doing is actually  
2           lightening that up even a little bit, where staff  
3           can participate in discussions or meetings that  
4           have substantive discussions, as long as it's not  
5           negotiating a position.

6                   But right now, yes, if it's  
7           clarification of data, for example, we allow that  
8           to happen without it being in a public meeting.

9                   PRESIDING MEMBER LAURIE: Okay. Is  
10          Roberta here?

11                  MR. BLEES: I'm sure she would come down  
12          if we called for her. I'd be happy to go get her.

13                  MR. THERKELSEN: She was earlier.

14                  DR. TOOKER: I think one of the unique  
15          circumstances that I don't want to let us escape  
16          here is that I think we have a unique  
17          responsibility of staff in a siting case to  
18          coordinate closely with agencies.

19                  And we typically have those meetings on  
20          a regular basis. We have free and open  
21          communication with them. And oftentimes address  
22          specific permitting issues.

23                  But we see that as part of our staff  
24          responsibility as distinct from meeting with the  
25          applicant or with members of the public.

1                   And I'm concerned because the language  
2           here under item 4, if we don't move forward on  
3           this, I don't want people to get the impression  
4           that we can no longer meet with agencies to  
5           coordinate the review process and to resolve  
6           issues.

7                   MR. THERKELSEN: And the distinction  
8           there is that agencies are not intervenors,  
9           they're not parties to the case. Now, if an  
10          agency does choose to become an intervenor in a  
11          case, then we have treated them like we have other  
12          parties in the case.

13                  PRESIDING MEMBER LAURIE: Let me explain  
14          on the record what my bias is on this matter.

15                  For 25 years I was either staff or a  
16          representative who would meet with staff on  
17          projects. During those 25 years I never viewed, I  
18          never had any reason to believe that staff  
19          corruption occurred. Although in almost every  
20          case there would be allegations of it.

21                  I distinguish that from the decision-  
22          makers. You go meet with the board of supervisors  
23          or city council people for an express reason, not  
24          to, you know, talk about the weather, because  
25          those are political decisions that are being made.

1               Nobody is suggesting that the ex parte  
2       rule in regards to the Commissioner be dissolved.

3               I understand the credibility is a public  
4       perception credibility issue. And I respect that  
5       that needs to be weighed. It's simply  
6       inconsistent with my personal experiences. But I  
7       do understand the value, as well.

8               Karen, did you have another comment on  
9       this before I ask Roberta?

10              MS. EDSON: I'd just like to give a  
11       quick response to some of this discussion, and  
12       just to give emphasis to the importance of this  
13       issue.

14              I'm not aware of any other permitting  
15       process where a party or a staff to decision-  
16       makers, when the staff is not the decision-maker  
17       under ex parte rules, where that staff is  
18       prohibited from talking to other parties, meeting  
19       with them, negotiating with them on substantive  
20       issues. If there is such an example I hope  
21       someone will tell me.

22              But I'm simply not aware of that kind of  
23       prohibition. And that to impose it in this  
24       circumstance, I think, implies that there might be  
25       the corruption that you're referring to. Or a

1 concern about the credibility of the process that  
2 I agree with you, is always a concern, should be a  
3 concern. I understand wanting to protect the  
4 credibility of the process.

5 But there are many ways to protect the  
6 credibility of the process without prohibiting  
7 these conversations or requiring transcripts of  
8 the conversations or things of that sort.

9 The Commission, where there are  
10 subsequent negotiations and agreements reached,  
11 could require immediate notice of all parties.

12 The staff is not a decision-maker. And  
13 for the staff in this circumstance they're almost  
14 putting themselves forward as a decision-maker.  
15 They're simply not.

16 And for this process to work, the  
17 Commission, itself, has talked about important  
18 reliability needs, the importance of bringing  
19 projects on line in a timely manner. Where there  
20 are substantive issues that can be resolved  
21 outside of the formal hearing process, I think  
22 that in order to improve this process it's really  
23 imperative for the Commission to allow these kinds  
24 of communications to occur.

25 PRESIDING MEMBER LAURIE: Thank you.

1                   MR. THERKELSEN:  If I may make one  
2       comment?

3                   PRESIDING MEMBER LAURIE:  Yes.

4                   MR. THERKELSEN:  I sensed a  
5       misunderstanding, and I sensed the  
6       misunderstanding on Karen's part that this item  
7       number 4 is a further restriction of the noticing  
8       requirements.  Indeed, it is not.  It is a  
9       lessening of the noticing requirements that  
10      currently exist.

11                  MS. EDSON:  I understand that, Bob.

12                  MR. THERKELSEN:  Okay, I just wanted to  
13      make sure.

14                  MS. EDSON:  It's half a loaf and it's  
15      the --

16                  MR. THERKELSEN:  You're right.

17                  MR. THERKELSEN:  -- unimportant half of  
18      the loaf.

19                  MR. ALVAREZ:  Commissioner, if I may, --

20                  PRESIDING MEMBER LAURIE:  Yes, thank  
21      you.

22                  MR. ALVAREZ:  Manuel Alvarez, Southern  
23      California Edison Company.  I actually think that  
24      this proposal, you know, though it's been  
25      characterized as half a loaf, is in fact progress

1       being made in the new environment. So I would  
2       support the proposal.

3               The concern in negotiating a staff  
4       resolution among parties is you have to confront  
5       the issue of who the staff will negotiate with.  
6       Will it negotiate only with the citizens in your  
7       example for the power plant, or will it only  
8       negotiate with the citizens against the rotten  
9       power plant.

10              And I don't know how an outside party  
11       observing the process would know which one of  
12       those entities the staff is negotiating with.

13              And then the other issue you would have  
14       is that I wouldn't know, as an outside party, when  
15       the staff had made an arrangement, cut a deal, or  
16       took a position. And so how would I ever find  
17       that out until the staff decided in the process to  
18       unveil that agreement.

19              And so people would be hindered from  
20       participating in that activity.

21              I think the step in terms of information  
22       exchanges with parties without notice is, in fact,  
23       progress. But for closure of negotiating a  
24       position, I think it's a safeguard that maintains  
25       the objectivity of the staff, and the objectivity

1 of the entire process from people who are not in  
2 that particular room negotiating or outside  
3 parties and the general public who are coming in  
4 and seeing the case unfold as positions and issues  
5 are presented to you as a decision-maker.

6 So I would support the proposal as  
7 drafted.

8 PRESIDING MEMBER LAURIE: Thank you very  
9 much. Roberta, can I ask you a question, please,  
10 from your perspective as the Public Adviser.

11 Because you advise even intervenors, do  
12 you not?

13 MS. MENDONCA: Yes, I do. Hello, my  
14 name is Roberta Mendonca and I'm the Public  
15 Adviser.

16 PRESIDING MEMBER LAURIE: So let's say  
17 you had a neighborhood group that doesn't matter,  
18 either supported the power plant or objected to  
19 the power plant.

20 MS. MENDONCA: Doesn't matter to me,  
21 either way.

22 PRESIDING MEMBER LAURIE: Would you  
23 want, from your perspective, that party to be able  
24 to have a cup of coffee with Mr. Therkelsen and  
25 express their concerns?

1 MS. MENDONCA: I think you get into a  
2 very grey area because the ability for that to  
3 happen is almost impossible from the perspective  
4 of intervenors. They're not where the staff is.  
5 They're not a major part of the ebb and flow of  
6 the case. They come into public meetings,  
7 essentially.

8 And so would I want them to be able to  
9 voice an opinion? I don't think there's any  
10 problem in voicing an opinion to the staff at any  
11 given point in time. But do I want them to be  
12 able to influence the decision, --

13 PRESIDING MEMBER LAURIE: There is  
14 public meetings, things do not get solved at  
15 public meetings. That's my experience. People  
16 express their opinions and their viewpoints. You  
17 do not solve problems at public meeting where you  
18 have hundreds of people in attendance. That's not  
19 the purpose of the meeting; doesn't happen that  
20 way.

21 So from the perspective of your  
22 constituency, would you -- and if you find this  
23 leading, then go ahead and object to it -- but  
24 would you find it beneficial or objectionable to  
25 be able to have those people have access to all



1 the parties. Homeowners for Power Plant,  
2 Homeowners Against Power Plant, if you want those  
3 people to be able to meet with the applicant?

4 MS. MENDONCA: I believe that the  
5 current rules allow them to meet with the  
6 applicant, and I think you get into trouble when  
7 you start putting public participation, because  
8 there are different levels of public  
9 participation.

10 Obviously once you become an intervenor  
11 and you become a party, you play by a different  
12 set of rules than if you're a member of the public  
13 and you're a part of a public group that has not  
14 intervened. So, --

15 PRESIDING MEMBER LAURIE: Okay, it's my  
16 understanding that staff is interpreting the rules  
17 that homeowners cannot meet with applicant.

18 MR. THERKELSEN: No, excuse me, the  
19 clarification there is if they are a party, if  
20 they're an intervenor. I assumed your Homeowners  
21 Against Whatever were formal intervenors.

22 PRESIDING MEMBER LAURIE: Yes, --

23 MR. THERKELSEN: The public --

24 PRESIDING MEMBER LAURIE: -- they're an  
25 intervenor.

1           MR. THERKELSEN: Okay, yeah, members of  
2           the public that aren't part of an intervenor are  
3           allowed to meet with anybody.

4           PRESIDING MEMBER LAURIE: So what  
5           happens if Homeowners consists of three people and  
6           all three are members of the public, and number  
7           two, as a member of the public, wants to go meet  
8           with the applicant, and meeting with the applicant  
9           in the capacity as an interested neighbor as  
10          opposed to president of Homeowners for Power  
11          Plant.

12          MR. THERKELSEN: They're still a member  
13          of the intervenor.

14          MS. MENDONCA: I believe that my  
15          experience has been that oftentimes the applicant  
16          does meet with individuals in the community,  
17          including people that have attended public  
18          meetings and have voiced interest or concerns or  
19          support. I believe the applicant does reach out  
20          and have discussions with those people.

21          As for resolving issues, I don't believe  
22          that they have those discussions. But I believe  
23          the applicants work very hard to present their  
24          side of their proposal.

25          PRESIDING MEMBER LAURIE: And that's --

1       for example, if there are one set of neighbors who  
2       were an intervenor and they consisted of the  
3       property owners to the west side of a proposed  
4       plant. And they had very real concerns about  
5       aesthetics, about traffic. And the applicant met  
6       with them and said, okay, I hear your concerns.  
7       Let me propose this. Does this satisfy your  
8       needs, or can we talk about this. Isn't that a  
9       good thing?

10               MS. MENDONCA: I think it happens right  
11       now. I don't think you need to change any rules  
12       to make that happen. It happens.

13               PRESIDING MEMBER LAURIE: Well, we do.  
14       Because as staff is interpreting our regs as  
15       saying as long as Homeowners is a party that you,  
16       in fact, not have that meeting.

17               And so if Homeowners is an intervenor  
18       and applicant meets in the living room with the  
19       president of Homeowners. And at the end of the  
20       evening Homeowners say, great, we appreciate it,  
21       you have solved our concerns. We're going to go  
22       to the county and say we've chatted, and as long  
23       as this is incorporated as a condition to the  
24       project we're happy campers.

25               MS. MENDONCA: Well, I believe these

1 discussions take place. And I think the  
2 differentiation oftentimes in cases there will be  
3 stipulations where the parties have agreed to  
4 agree to certain items. Not every party agrees,  
5 but some of the parties do agree, and they are  
6 called stipulations.

7 PRESIDING MEMBER LAURIE: Often one in  
8 particular.

9 MS. MENDONCA: So, I think the  
10 difference is that the applicant and the  
11 intervenor are free to meet, but not necessarily  
12 the staff.

13 The staff is presenting not a biased  
14 or -- they're to be doing an independent analysis.  
15 And I think that what happens is that the staff is  
16 not to be involved in private negotiations.

17 PRESIDING MEMBER LAURIE: Okay.

18 MS. MENDONCA: And that's how I would  
19 differentiate what you're talking about. I think  
20 the practice is that it is common for the  
21 applicant and both members of the public and  
22 intervenors to have conversations about the  
23 project.

24 And I think that what you're trying to  
25 preserve in your noticing positions is that the

1 independent analysis that's done by the Energy  
2 Commission is, in fact, preserved.

3 PRESIDING MEMBER LAURIE: Okay.  
4 Question. Can applicant meet with Fish & Game?  
5 What if Fish & Game is an intervenor?

6 MS. MENDONCA: I believe it needs to be  
7 noticed. And I think the same thing is true,  
8 although I don't believe it necessarily happens,  
9 when you have a routine -- a party that appears  
10 fairly regularly in many of the cases I think  
11 there are often private negotiations that take  
12 place between the parties, not between the Energy  
13 Commission and the parties.

14 PRESIDING MEMBER LAURIE: Okay,  
15 understand. And, thank you, Roberta.

16 MS. MENDONCA: Sure.

17 PRESIDING MEMBER LAURIE: Mr. Harris.

18 MR. HARRIS: Jeff Harris. Couple  
19 thoughts on this issue. First off, on the  
20 question of can intervenors talk to intervenors  
21 and the intervenors talk to applicants, I don't  
22 see anything in the regulations that would  
23 preclude that. And I would, you know, venture to  
24 say, although I'm not a constitutional scholar  
25 that that would probably be unconstitutional to

1 give up your free speech rights by becoming a  
2 party to this proceeding.

3 In terms of parties talking and  
4 intervenors talking to people and the public, I  
5 think that that's clearly not an issue. And I  
6 hope that one's off the table unless I've  
7 misunderstood things.

8 In fact, I think that it's too bad that  
9 the Commission can't compel parties to have to  
10 talk. But, --

11 (Laughter.)

12 MR. HARRIS: -- at nonpublic meetings  
13 where things are kind of more informal.

14 My major concern about this proposition  
15 is I think it really does have a potentially  
16 stifling effect. And one thing in particular is  
17 that the idea that to be some kind of official  
18 transcript kept or some kind of docketed record.  
19 And I don't know if staff is talking about a court  
20 reporter transcript, I doubt it. I think it's  
21 probably more like a record of conversation.  
22 That's the way I took this.

23 And I'm going to go back to the nature  
24 of the process here, again. We've got an informal  
25 discovery period at the beginning, and then we

1 have a form adjudicatory proceeding at the end.

2 And those are kind of separate issues for me.

3 The notion that staff can negotiate  
4 settlement on substantive issues, for me, is  
5 completely misleading. And I think it creates in  
6 the minds of the public a spectre that something  
7 horrible is happening out there behind closed  
8 doors.

9 And quite simply, if applicant and staff  
10 and every intervenor got together and decided how  
11 they wanted the case to go, none of those folks  
12 are decision-makers. And to prevent those folks  
13 from talking to each other, using terms like  
14 negotiating implies that somehow somebody is  
15 vested with authority to go behind closed doors  
16 and do something that's going to make the process,  
17 ultimately culminate in a process result that's  
18 desired.

19 And I think that's just fundamentally  
20 wrong. It's not what happens here. Staff is  
21 extremely influential. They work extremely hard.  
22 They do very good work. But they're not the  
23 decision-maker, and I think that --

24 PRESIDING MEMBER LAURIE: Would you --  
25 what would your thoughts be about a scenario where

1       you have adjacent homeowners who are concerned  
2       about the project? And they're a formal  
3       intervenor. They've organized legally and  
4       effectively.

5               MR. HARRIS: Two homeowners, both are  
6       individual intervenors? Or they're part of an  
7       association?

8               PRESIDING MEMBER LAURIE: No, it's  
9       Homeowners Again.

10              MR. HARRIS: Okay.

11              PRESIDING MEMBER LAURIE: And a meeting  
12       takes place in the living room of the president of  
13       Homeowners. And applicant comes in. Homeowners  
14       express the view that they're concerned about a)  
15       late night traffic; b) the aesthetics of the  
16       project; and c) a health concern.

17              Applicant says we agree to run no trucks  
18       later than 7:00 p.m., and nothing Saturday  
19       afternoon or all day Sunday. We agree to plant  
20       eucalyptus trees. And we will do this on the  
21       safety issue.

22              Should you then be able to communicate  
23       that to staff and say, look, you folks are aware  
24       that Neighbors Against have had these concerns.  
25       We've had a discussion with them, and we've agreed



1 to add these as conditions to the project.

2 What would your position be on being  
3 able to do that?

4 MR. HARRIS: I think as a developer  
5 you're very happy if you've eliminated the  
6 opposition. I think that meeting ought to be able  
7 to occur. Especially in your scenario, there's no  
8 staff involved in that meeting. So the meeting  
9 between Homeowner and the project applicant  
10 absolutely should be able to occur. I think it  
11 probably ought to occur more often.

12 But one of the problems in this process  
13 is it's becoming very very formalized. We have --  
14 let me back up. There are instances of videotape,  
15 for example, being made of workshops which are not  
16 normally transcribed. That changes the  
17 environment of such a setting from communication  
18 about issues to people sending messages. You end  
19 up with people doing soundbites because they know  
20 there's a rolling videotape there. You end up  
21 with a record even though there's no official  
22 record.

23 And I've even heard of this as where  
24 those comments have been quoted in various  
25 Commission proceedings. And so you end up in a

1 situation where even with data requests, people  
2 will ask questions in their data requests to make  
3 a point, not to get information. And applicants  
4 will respond in data requests in such a way that  
5 it's not going to get quoted back in the flyer.

6 This formalization of communication is  
7 really preventing people from talking to each  
8 other. And what I think staff is proposing is  
9 creating even more formal process.

10 And I do actually have a solution or a  
11 proposed solution, when I get to the end here,  
12 which I think might help put some sort of bright  
13 line.

14 PRESIDING MEMBER LAURIE: So, are you  
15 there yet?

16 MR. HARRIS: If you want me to be, I  
17 certainly am.

18 (Laughter.)

19 PRESIDING MEMBER LAURIE: No, go ahead.

20 MR. HARRIS: A couple of things. The  
21 regulations that we talked about, 17, I think it's  
22 10, is in the subsection under public agency  
23 rights and responsibilities regarding notice.

24 And so, you know, I'd ask that that  
25 section be read in that context. In reading the

1 two sections that were cited, I don't see anywhere  
2 that would prevent the kind of meetings that we're  
3 talking about informally.

4 The bright line is usually what people  
5 want. They want to know who can they meet with  
6 and who can't they meet with.

7 Perhaps a way to deal with this is to  
8 recognize that the process has an informal period,  
9 a discovery period, and a formal period where we  
10 get into the adjudication.

11 Perhaps a way to deal with this would be  
12 to suggest that those types of communications,  
13 including communications between staff and  
14 Homeowners For Power Plants can occur. No record  
15 is needed to be required of that. It's an  
16 informal discussion, it's not a negotiation, it's  
17 a discussion of the issues, how might we mitigate  
18 noise, aesthetic, public health issues. Have that  
19 open and free.

20 And then when the proceeding switches to  
21 its formal phase, perhaps at the prehearing  
22 conference or maybe at the beginning of  
23 evidentiary hearings, I haven't really line out in  
24 my mind where you draw the line, have a strict  
25 reporting regulation kick in that says, again, I'm

1 not talking about ex parte issues, I'm dealing  
2 with staff communications, that says essentially  
3 any meetings between staff and anybody, there'd be  
4 records of conversation. Those would be docketed  
5 and served on everybody.

6 At that point I think maybe it makes  
7 more sense to formalize the process, when you're  
8 getting into the evidentiary hearings.

9 But what I'm saying in the process now,  
10 early on, is that the value of the discovery  
11 portion of the Commission's process, the informal  
12 discussions over a cup of coffee in the back of  
13 the room, you know, during a break, which often  
14 solve the problems, are not happening.

15 And I think to the extent that we've  
16 formalized this process in the discovery process,  
17 even earlier states, as has been suggested by  
18 staff, is going to eliminate that informal  
19 communication.

20 So I throw that out there as a  
21 possibility of looking for a point in time in the  
22 Commission's siting proceedings where you say,  
23 okay, at this point the rules have changed. We're  
24 now in a formal hearing.

25 That way the evidentiary record, the

1 record that you as decision-makers rely on, is  
2 clear. It's the testimony filed; it's anything  
3 that's docketed from that point forward. It's  
4 basically all the things that happen in the  
5 adjudicatory portion of your proceeding.

6 I think with that kind of scenario you  
7 would get the best of both worlds. You get the  
8 benefits of the informality and the bright line  
9 that everybody would know, okay. I had a  
10 conversation with Mr. Therkelsen before the  
11 prehearing conference, it's not an issue, here it  
12 is in the regulations.

13 If I tried to have one afterwards, it  
14 could still happen, but there has to be a report  
15 filed. And whether that burden's on the applicant  
16 or staff to file it, you know, we leave that up to  
17 your discretion.

18 PRESIDING MEMBER LAURIE: Thank you.  
19 Mr. Williams, did you have -- I'm sorry, wait a  
20 minute. Roberta, were you done?

21 MS. MENDONCA: Just wanted to make one  
22 observation if I could, please.

23 One of the things that happens when we  
24 work as we do, often from 8:00 to 5:00, is we  
25 forget what it's like to be a member of the

1 public. In a discussion like this it calls upon  
2 me to just make this observation.

3 I've hurried home, I've picked up the  
4 newspaper, here I read there's going to be a  
5 hearing and I go and I show up. And the people  
6 are lined up, and they're from the Energy  
7 Commission and I made my point.

8 How people react. That's the public  
9 reaction. But, you know what, it was a workshop.  
10 At the beginning of the workshop the staff  
11 explained that we're not the decision-maker, we're  
12 here to exchange information. But, gosh, I was  
13 five minutes late, the babysitter wasn't there, I  
14 didn't get there for that opening comment.

15 I don't know who's a decision-maker and  
16 who's not a decision-maker. It's really hard for  
17 me to explain to the public that I'm not a part of  
18 the staff and I'm not a decision-maker.

19 So we're using a lot of terms here to  
20 deal with a situation, and I think it's very hard  
21 for the public to understand sometimes what we  
22 mean.

23 And so, yes, notice, it's very  
24 formalistic. I understand why people are asking  
25 for transcribed hearings, because they think

1       they're not heard by the decision-makers. So  
2       that's why they'd like to have a little bit more  
3       formality.

4               But that's just my observation. It's  
5       part of our problem. And it's nothing that we can  
6       do anything more about than work harder to make  
7       ourselves more simple and more easily understood.

8               But I was called upon, in my mind, to  
9       say, yeah, when we use terms like decision-makers,  
10      and we try to organize our thoughts and organize  
11      our processes so that only some things happen with  
12      staff and only some things happen with  
13      Commissioners. Right there, we're light years  
14      beyond what the public is actually understanding.

15              Thank you.

16              PRESIDING MEMBER LAURIE: Mr. Williams.

17              MR. WILLIAMS: Hi, I'm Robert Williams  
18      from San Jose.

19              First, let me thank you, Commissioner  
20      Laurie, I think this discussion of how to interact  
21      between staff and intervenors is extremely helpful  
22      to me.

23              I've spent 30 years of my life at the  
24      professional level interacting with staff of the  
25      Nuclear Regulatory Commission and the EPA. I know

1       that such interactions do go on.

2               A few observations perhaps before I make  
3       some specific points.  It's a brainstorming  
4       suggestion, but I think it might have merit.  It's  
5       taken me four months to realize that a PSA, in the  
6       view of the staff and the applicant and the  
7       Commissioners, is a starting point.

8               I think many of the public feel a PSA is  
9       the beginning of the end, a near-final decision.  
10       And so one of the ways of making a PSA look like  
11       the beginning of a hearing process, and the  
12       beginning of a decision process, would be to have  
13       a potential list of issues that have been an issue  
14       in the discovery part of the hearing.

15              Now the reason I would plead for this  
16       would be, for example, let's suppose I'm an  
17       intervenor and I have a different position on what  
18       should be done with the power plant than my friend  
19       down the street.

20              And they both come to a meeting or  
21       workshop, and I happen to be out of town on  
22       business.  So my friend down the street cuts the  
23       deal the way he thinks the deal should be cut, or  
24       the Citizens Against the Power Plant cut the deal  
25       the way they think.



1                   And I come back to town and I say, oh,  
2           my god, they've sold us down the river. I'm not  
3           in favor of that deal at all.

4                   PRESIDING MEMBER LAURIE: Okay, can I  
5           stop you there?

6                   MR. WILLIAMS: Yes. I think that's what  
7           you were getting at earlier.

8                   PRESIDING MEMBER LAURIE: Let's say that  
9           you and your friend are officers in Homeowners  
10          Against.

11                  MR. WILLIAMS: No, let's say that we're  
12          not, because we have different opinions on how to  
13          deal with the power plant. That was the --

14                  PRESIDING MEMBER LAURIE: Okay, well, --

15                  MR. WILLIAMS: Okay.

16                  PRESIDING MEMBER LAURIE: -- that was  
17          going to be my point. I'm sure in any of these  
18          neighborhood organizations of 100 people there's  
19          125 different positions.

20                  MR. WILLIAMS: You got it.

21                  PRESIDING MEMBER LAURIE: Okay.

22                  MR. WILLIAMS: That's precisely the  
23          problem. I have no authority over my neighbor, I  
24          have nothing but staying power or moral suasion to  
25          get any of my disparate and angry neighbors to

1 agree.

2 And so one of the downsides of this  
3 process is the appearance of disarray and  
4 disorganization amongst the intervenors. And it's  
5 more than an appearance, it's a reality. Because  
6 most of them have never done anything like this  
7 before. They're alternately mad and don't know  
8 who to be mad at.

9 So, I think it's too much to expect that  
10 a negotiation between the applicant and any few  
11 parties can be taken at face value to suit the  
12 community.

13 Now, just speaking in general terms, the  
14 applicant often represents that a hearing with  
15 some staffer on the planning commission  
16 represents, quote-unquote, "what the city wants".  
17 And then that becomes a reason, well, I'm making  
18 this change to assuage the city. When, in  
19 reality, it's been part of a negotiation with a  
20 junior staffer and is being used as an excuse.

21 Now, there's a final -- not a final  
22 point, but another point that needs to be on the  
23 table. And that's it's taken many of us awhile to  
24 realize that mitigation isn't real mitigation.  
25 It's paperwork mitigation in many cases. And I'm

1       referring, of course, to pollution credits, or --  
2       what's the buzz word, environmental remediation  
3       credits, or something like that.

4               But you ask yourself, how can a power  
5       plant go ahead without real knowledge of air  
6       quality impacts, without real knowledge of ambient  
7       air quality, without real knowledge of dozens of  
8       other factors at the site.

9               And the answer is because there isn't  
10       going to be real mitigation done. There is going  
11       to be paperwork mitigation done by buying  
12       pollution credits.

13              PRESIDING MEMBER LAURIE: Let me ask you  
14       a question and try to get you back on point.

15              MR. WILLIAMS: Okay. Thank you.

16              PRESIDING MEMBER LAURIE: And this may  
17       be repetitive. Let's say you are president of  
18       Homeowners Against.

19              MR. WILLIAMS: Sure.

20              PRESIDING MEMBER LAURIE: And you had  
21       really one major simply objection, you didn't like  
22       the looks of the power plant and how it might  
23       affect the value of your home.

24              Applicant is aware of your concerns and  
25       applicant has a meeting of their own staff and

1 say, okay, how do we solve Mr. Williams' -- how do  
2 we solve Homeowners' concerns.

3 And they say, well, you know, what we  
4 can do, we can plant 100 full-grown eucalyptus  
5 trees and --

6 MR. WILLIAMS: Or we can put it under  
7 the ground so only --

8 PRESIDING MEMBER LAURIE: Well, yeah,  
9 okay, fine.

10 MR. WILLIAMS: Yeah.

11 PRESIDING MEMBER LAURIE: Fine. Let's  
12 say the applicant says they can do that.

13 MR. WILLIAMS: We'll totally hide the  
14 plant.

15 PRESIDING MEMBER LAURIE: Do you want to  
16 be able to have that conversation with the  
17 applicant so that you can freely discuss that  
18 issue and reach a deal to satisfy those concerns  
19 of yours?

20 MR. WILLIAMS: Yes. And let me carry  
21 forward your example just a step further. The  
22 answer was yes, I want to have that discussion.  
23 But the procedural thing I would like to see is  
24 that the PSA, the preliminary staff analysis,  
25 include as options in some appropriate way, or

1       contentions, the alternatives to mitigate the  
2       visual effect.

3               Now the reason that I didn't agree with  
4       Homeowner Association A and why I have set up  
5       Association B is because I don't give a damn what  
6       the plant looks like, I care about the air quality  
7       impacts.

8               So, hiding the plant makes no difference  
9       to me. I want something done about the air  
10      quality and the cloud of steam. So these fellows  
11      who said I don't give a damn about air quality or  
12      a cloud of steam, I'm happy now that they dug a  
13      hole and put the plant in it, and you can't see  
14      anything from the freeway.

15              I'm still up in arms because nothing  
16      substantive has changed.

17              PRESIDING MEMBER LAURIE: Well, then  
18      let's turn it around. Let's say the applicant  
19      says under no circumstance am I going to screen,  
20      but, you know, I know Mr. Williams has concerns  
21      over air quality, and we can do this.

22              So they come to you and say, Mr.  
23      Williams, you know, this is our suggestion, what  
24      do you think about it.

25              MR. WILLIAMS: Well, now because I'm

1       this Aristotelian thinker, Plato's kin, whatever,  
2       a believer in the public process, I believe that  
3       just as I shouldn't cut a smoke-filled-room kind  
4       of deal to satisfy my particular concern, neither  
5       should my friends.

6               So somehow this issue should come into  
7       the PSA at the start of the process and be openly  
8       heard.

9               PRESIDING MEMBER LAURIE: My concern,  
10       and I respect that, and to a large extent I agree  
11       with it, my concern is that the public process is  
12       not nearly as conducive towards resolving those  
13       issues as private meetings.

14              MR. WILLIAMS: Now, I also agree with  
15       that from three years of personal experience I  
16       could not agree more on that.

17              I think if such issues were brought  
18       together and put in a pile, then a meeting could  
19       be scheduled and let's suppose we have these five  
20       disparate intervenors and this applicant who has  
21       tried to please everybody.

22              And now we hold a noticed meeting. And  
23       we all come together and we say, hey, if this pile  
24       of compromises are adopted are we all happy. And  
25       we all look around the table and we say, yes,

1 we're all happy.

2 Now, Jeff doesn't believe that will ever  
3 happen, probably. But, I think that's a  
4 possibility. I would support the dig a hole and  
5 hide the plant approach if my friend would support  
6 getting rid of the water plume and further  
7 mitigating the NOx.

8 And so that would be a compromise that  
9 would permit a single path in the PSA to go  
10 forward. But I would not have bought off on that  
11 idea if I didn't get to hear all the tradeoffs and  
12 all the deals that were cut.

13 PRESIDING MEMBER LAURIE: Have you ever  
14 participated in a mediation?

15 MR. WILLIAMS: Not personally. I have  
16 considered being a mediator at times.

17 PRESIDING MEMBER LAURIE: What happens  
18 in a mediation is that at some point the parties  
19 go off separately and talk to the mediator.  
20 Because of communication challenges between the  
21 parties, themselves.

22 And so during the course of a mediation  
23 there is the public discussion, but then the  
24 mediator will take A and talk to A; the mediator  
25 will take B and talk to B. And hopefully workout

1 the deal.

2 MR. WILLIAMS: Yeah, is there middle  
3 ground, and then he'll go to the applicant and  
4 say, gee, could you do this if --

5 PRESIDING MEMBER LAURIE: Yeah.

6 MR. WILLIAMS: Yeah.

7 PRESIDING MEMBER LAURIE: And our  
8 process does not allow that to occur.

9 MR. WILLIAMS: Well, now that's where  
10 maybe I'm too naive. In principle, it would occur  
11 in this meeting of the parties that resolved the  
12 way to mitigate the various contentions.

13 PRESIDING MEMBER LAURIE: With everybody  
14 in the room sitting around the table at the same  
15 time?

16 MR. WILLIAMS: Well, I agree with you,  
17 it would be a long meeting. It would be a  
18 several-day meeting.

19 (Laughter.)

20 MR. WILLIAMS: See, in the nuclear waste  
21 business we never have a one-day meeting. They're  
22 always three-day meetings.

23 (Laughter.)

24 MR. WILLIAMS: Let me -- well, --

25 PRESIDING MEMBER LAURIE: Okay.



1                   MR. WILLIAMS: Let me go back to the  
2                   meeting of December 13th just briefly. I felt  
3                   that one of the reasons there was a problem is  
4                   with 25 or 29 plant applications if the key  
5                   intervenor on every plant were in here hounding  
6                   the staff on a daily basis in much the same way  
7                   that the applicants were here interacting wit the  
8                   staff, that the staff would never get any work  
9                   done.

10                  So the proposal was to have periodic  
11                  technical meetings on each of the projects. And  
12                  further, that if the date of the meeting were  
13                  noticed like every six weeks there were a meeting  
14                  on X and every six weeks a meeting on Y, people  
15                  could build that into their schedules. People  
16                  like me in consulting businesses could schedule  
17                  around that if it made a difference to us.

18                  So, somehow I think the load on the  
19                  staff got lost in the proposal that you're putting  
20                  forward here. I think as a practical matter, the  
21                  staff does not have the time to give me the same  
22                  attention that they do an applicant.

23                  PRESIDING MEMBER LAURIE: Thank you.  
24                  Let's go ahead and wrap this issue up.

25                  MR. WILLIAMS: I then would like to come

1 back and just comment on a few of the others.

2 PRESIDING MEMBER LAURIE: Yes. Sir, you  
3 had a comment on this question? And then Karen  
4 after this gentleman's done you still have the  
5 microphone.

6 MR. OKUROWSKI: My name's Peter  
7 Okurowski. I spoke last time on this issue on the  
8 December 13th meeting.

9 I actually have a little bit different  
10 opinion than what I've heard expressed, in that I  
11 believe the staff is a decision-maker, as they  
12 should be, in certain areas.

13 When you work with staff what modeling  
14 assumptions will be used, how are we going to  
15 characterize this, what is going to get put into  
16 the PSA. They play a critical role in that, and  
17 it's actually because they're a decision-maker  
18 that I feel so strongly that you need to have  
19 communications with them, all the parties.

20 It's not just the facts, it's the  
21 intentions that are important. It's, you know, as  
22 quick of a discussion with the people who are  
23 going to make decisions going into that FSA is  
24 what I want to look for. And because the staff is  
25 so knowledgeable and their experts in their field,

1 I have no concern about the prejudicial  
2 implications that you were making, or you know,  
3 that there's somehow something bad happening or  
4 persuasion.

5 And I would recommend, following up on  
6 an earlier gentleman's, Jeff's, comments, that you  
7 be allowed to talk with the staff right up to the  
8 hearing. I mean I think that's where I would  
9 feel comfortable drawing the line between the  
10 formal and the informal.

11 But, you know, there are decisions,  
12 there is important work that the staff does do,  
13 and in order to facilitate that and help that, all  
14 the parties should have access to the staff so  
15 that we can try and get that document as good as  
16 possible.

17 So, you know, I just don't think the  
18 staff doesn't have decision-making authority. I  
19 think they do, and for that reason they need to be  
20 able to talk and get everybody's views and  
21 everybody's opinions.

22 And you gave an opinion -- or an issue  
23 earlier of would you support somebody meeting with  
24 the head of the CEC Staff at a coffee shop.  
25 Absolutely. I mean, I have a lot of faith in

1 upper level staff throughout the state that I've  
2 dealt with. I've never felt that that is an  
3 imposition.

4 Should I talk to Fish and Game? Yes.  
5 Should Fish and Game be allowed to talk with CEC?  
6 Yes. I mean if we don't we're going to need this  
7 extension of the 12-month period. We're going to  
8 need 24 months because this type of a formal  
9 process that we have takes a long time, and it's  
10 hard to get at the root of some of the issues.

11 I'll give an example. Let's say the CEC  
12 Staff recommends a mitigation of A and B. And you  
13 only see that in writing. You really don't know  
14 why they've chosen A and B. You can't ask them.  
15 You can't sit down and say, well, I've got access  
16 to C, D and E at a lot better rate than I do A and  
17 B. Are those okay. And they say, well, sure.  
18 You know, and you can get to that a lot faster  
19 than you can through a formal written thought  
20 process; get the lawyers; write something that  
21 goes through the legal counsel; then send it back  
22 to the CEC. CEC then reviews it, and it just  
23 takes a lot longer.

24 And I'd like to see this become a little  
25 bit more efficient. Thank you.

1                   PRESIDING MEMBER LAURIE: Thank you,  
2           sir. I'd like to move on from this issue out of  
3           necessity.

4                   I will stay here as long as necessary.  
5           Not everybody else might. Nor am I indicating  
6           that you should in any way short-circuit your  
7           comments. We do want to continue to get through  
8           them.

9                   Ms. Edson, you had the microphone.

10                  MS. EDSON: I'll be very brief with  
11           regard to the remainder. There's one of the  
12           remaining issues that we are concerned about and  
13           that is the expanded definition of electric  
14           utility in the regulations. We raised that issue  
15           previously and continue to have concerns that this  
16           has the effect of allowing the Commission to  
17           expand its reach into marketing activities that  
18           historically have not been under the Commission's  
19           purview. And I really see this as something very  
20           separate from power plant siting.

21                  We support deleting regulations that are  
22           bringing the regulations into conformance with  
23           changes contained in SB-110. We kind of question  
24           the importance of eliminating demonstration  
25           projects and multiple facility site regulations

1       until statutes are changed. We think that  
2       regulatory changes should follow the statutory  
3       changes.

4               And, lastly, we support requirements for  
5       site control, provided it is as suggested here,  
6       satisfied with an option to purchase or lease.

7               And we also support the approach to  
8       facility closure plans.

9               PRESIDING MEMBER LAURIE: I'm sorry,  
10      what was the last one?

11              MS. EDSON: That we support the approach  
12      to facility closure plans put forward.

13              PRESIDING MEMBER LAURIE: Thank you very  
14      much. Your input has been appreciated.

15              Additional comment regarding the  
16      regulatory portion of the document? Mr. Alvarez.

17              MR. ALVAREZ: Thank you, Commissioner.  
18      I'll try to be brief here. Item 11 and 13, the  
19      filing fee and facility closure issue.  
20      Fundamentally there's no disagreement on the  
21      facility closure, but I will raise a question of  
22      whether there's a need for legislative authority  
23      there.

24              I know from my past experience that that  
25      became an issue when it was first introduced as a

1 requirement for facilities, so I would just ask  
2 you to look at the need for legislative  
3 authorities there.

4 And then also on the filing fees --

5 PRESIDING MEMBER LAURIE: This is 13.

6 We're not seeking legislative authority --

7 MR. ALVAREZ: You're recommending to do  
8 it through regulation, and I'm just raising the  
9 question of whether you need legislative authority  
10 to in fact pursue that issue.

11 PRESIDING MEMBER LAURIE: Oh, you're  
12 saying we should have. I see, okay.

13 MR. ALVAREZ: And also on the filing  
14 fees, you wanted further discussion on that. I  
15 believe that's an issue that will have to be  
16 addressed legislatively in order to introduce that  
17 item.

18 Item 7, which is a definition of  
19 utility. The proposal, in fact, brings  
20 consistency within the Energy Commission for the  
21 definition of utility, but it's still a  
22 complication on a more broader question of  
23 electric restructuring in terms of what a utility  
24 is in this new electric world that we're  
25 confronting. When issues of public necessity and

1 convenience surface within the context of either  
2 transmission or land use questions or eminent  
3 domain, you also get into the question of the  
4 definition of utility.

5 So I'm asking you to basically think  
6 about it broader, because eventually you will have  
7 to do that when you deal with the other issues.

8 Thank you.

9 DR. TOOKER: So, are you suggesting that  
10 currently you wouldn't support the proposal?

11 MR. ALVAREZ: The proposal brings  
12 consistency within the Commission, within the  
13 Energy Commission's operation, but the  
14 Commission's operation is not in isolation within  
15 the context of the entire structure of the  
16 industry, so --

17 PRESIDING MEMBER LAURIE: So it should  
18 be --

19 MR. ALVAREZ: -- the broader question of  
20 regulatory definitions and operation over what  
21 constitutes a utility in this new world.

22 PRESIDING MEMBER LAURIE: Are you  
23 suggesting that the definition in the Warren  
24 Alquist be changed?

25 MR. ALVAREZ: Yeah, I believe you need



1 to confront that issue, and perhaps deal with the  
2 consistency between the Warren Alquist Act and the  
3 public utilities code.

4 PRESIDING MEMBER LAURIE: Thank you very  
5 much. Mr. Harris.

6 MR. HARRIS: Jeff Harris. I have two  
7 items, item number 3, and this one's just a kind  
8 of an idea of wanting to make sure that we get to  
9 look at the specific language that's being  
10 developed here. Talking about letters of intent  
11 and option contracts.

12 I don't think there's a problem here.  
13 In fact, I think ultimately this clarifies the  
14 process and it will be a good thing.

15 I want to make sure, though, there has  
16 been in the past in certain siting cases some  
17 disagreement between staff and applicants as to  
18 when exactly the ERCs have to be surrendered.

19 There's a certification by the air  
20 district, and I can't remember the exact language  
21 now. It's have been identified and will be  
22 obtained, or something like that. And the  
23 question arises, what does that mean at the siting  
24 process. Does that mean precertification, you  
25 have to turn the ERCs in. Or is there some

1 flexibility to go out and look for maybe more  
2 local offsets to use in your offsets package.

3 Those kind of questions that are really  
4 in the details. And I think again it's not going  
5 to be any big issue. We want to work with staff  
6 on developing those definitions to make sure that  
7 we're all on the same page, consistent with what  
8 the Act requires about the timing for identifying  
9 ERCs.

10 The other issue is item 12, site  
11 control. I think I learned last December from  
12 Commissioner Rohy that this was an issue in one  
13 siting case, and so my initial reaction to this  
14 was that this is a problem that doesn't exist.  
15 But maybe it does.

16 So, recommendations in the alternative.  
17 Number one, I don't think it's very likely that  
18 power plant developers are going to go out and get  
19 an AFC and get a license on a project that they  
20 don't have site control. I said not very likely,  
21 because I know that has happened, but --

22 (Laughter.)

23 MR. HARRIS: You know, actually my  
24 retirement plan will be to own that piece of land  
25 when somebody's got a license for it.

1 (Laughter.)

2 MR. HARRIS: So I don't know that this  
3 is a real problem, but if it is, from staff's  
4 perspective, something you want to deal with, I  
5 would suggest that you consider a process similar  
6 to the confidentiality that you allow for emission  
7 reduction credits. So a confidential filing that  
8 might let staff know about the progress of site  
9 control.

10 The idea there again is to make sure  
11 that staff is comfortable with the site control  
12 issue, but at the same time applicant isn't put in  
13 a competitive disadvantage by having a  
14 proclamation from a state agency that says, you  
15 know, get your one site, this specific form, this  
16 kind of contract, that kind of thing. The detail  
17 could hurt in discussions about acquiring sites  
18 and dealing with options.

19 So -- and I'm rambling, but basically  
20 either I don't know that you need this  
21 requirement, or in the alternative if you're going  
22 to do it, make sure that it's clear that  
23 confidentiality along the ERC model can be used.

24 PRESIDING MEMBER LAURIE: We're not  
25 interested in seeing the details of your sales

1 contract.

2 MR. HARRIS: Right.

3 PRESIDING MEMBER LAURIE: Or your option  
4 contract. Is that correct, staff?

5 DR. TOOKER: Correct.

6 PRESIDING MEMBER LAURIE: Normally when  
7 you have an option agreement you have a memorandum  
8 of option and/or other satisfactory documentation.

9 MR. HARRIS: Right, and I think we're  
10 just looking for the same, again the same model of  
11 ERCs. Once you have a binding option contract  
12 usually the ERC sources are made public at that  
13 point. And probably the same principle should  
14 apply here.

15 PRESIDING MEMBER LAURIE: Thank you,  
16 sir, very much.

17 Mr. Harris.

18 MR. WILLIAMS: Williams?

19 PRESIDING MEMBER LAURIE: Mr. Williams.  
20 Mr. Harris, kindly take your seat, sir.

21 (Laughter.)

22 MR. WILLIAMS: I'm glad Mr. Harris  
23 wasn't offended by that.

24 I'll try to be brief. I have to drive  
25 to San Jose tonight, and I commit that I will stay

1 here until the meeting is over, so I have every  
2 incentive to get out of here quickly.

3 First, let me thank you for recommending  
4 the electronic filing. Let me just urge that in  
5 order to have it turn out to be workable and  
6 practical, take some time to issue a few  
7 standards. I think the simplest requirement would  
8 be a submission as an acrobat PDF file. It might  
9 be possible to accept Microsoft Word Docs, but I  
10 am concerned that they are vulnerable to some  
11 types of electronic changes that might not be easy  
12 to control. We need to talk to an expert on that.

13 Point 2, on appeals of committee orders.  
14 I think this is a terrible thicket and no time  
15 limit should be put on the timeliness of appeals  
16 of orders. Particularly if we're going to have  
17 this two-phase process where, as Mr. Harris  
18 describes, the first part is without many hearing  
19 records, and so on and so forth. That is all  
20 these workshops and sort of gentlemen's  
21 negotiations.

22 Then when I come in later and say  
23 something, you know, I thought we agreed in the  
24 workshop to do X and Y, and the applicant didn't,  
25 so now I want to stop this bandwagon. And you say

1 no, your appeal of that is not timely. Leads us  
2 to a real thicket.

3 So, I think every appeal should be heard  
4 on its merit.

5 With respect to new definitions, again I  
6 haven't had time to track down what the proposed  
7 new definition is, but I think there is a higher  
8 issue. I think some constraint needs to be put on  
9 ERCs, these energy resource credits, as to where  
10 they're used. Specifically the trading of  
11 volatile organics for NOx and other things. And  
12 the rumors that are sweeping the Silicon Valley  
13 these days are that well, all these power plants  
14 are being built to send power to Mexico.

15 And if that's the case, and the ERCs are  
16 going to come from the midwest, so California  
17 cities are going to receive pollution credits from  
18 the midwest in order to send power to Mexico. And  
19 that's an awfully demagogic statement, but it  
20 illustrates that something needs to be done about  
21 where ERCs can be used.

22 Noticing provisions. Again, let me  
23 reiterate the plea for periodic technical  
24 conferences so that we don't have to come up here  
25 and tour the halls of the Energy Commission.

1                   Item 5, distribution of the AFCs. I  
2           don't understand why CalISO doesn't get treated  
3           just like any other agency, Bay Area Air Quality  
4           Management District, or Bay Area Water Management  
5           District, and just be required to make their  
6           assessment in 180 days just like everybody else.

7                   Is there a short answer to that? To the  
8           staff?

9                   MR. THERKELSEN: This would basically do  
10          that. We'd make sure that they get it just like  
11          everybody else, and we would ask their comments.

12                  MR. WILLIAMS: Thank you.

13                  DR. TOOKER: So you support that?

14                  MR. WILLIAMS: Yeah, there's one I  
15          support. I have to keep making stars by those.

16                  Obtaining information. Definition of  
17          utility. I would urge that you substitute  
18          everywhere you can in the regulation a different  
19          term, something like merchant power vendor, when  
20          you truly mean merchant power vendor, because of  
21          the mindset that electric utility means a  
22          regulated electric utility.

23                  And there is a mindset that a regulated  
24          electric utility should be allowed to do certain  
25          things. And I think we need to develop a new

1       mindset. I'm entirely in favor of merchant power  
2       vendors provided the process operates  
3       appropriately.

4               With respect to demonstration project, I  
5       don't agree with the recommendation to eliminate  
6       the definition of a demonstration project. I  
7       believe a demonstration project should be kept and  
8       that there should be a simple scheduling algorithm  
9       with demonstration project on a site that does not  
10      have owner's control, a 36-month schedule; a  
11      standard project on a site without ownership  
12      control, 24-month schedule; and a project on -- a  
13      standard project on a site that's got LORS and  
14      everything, 12 months.

15              So keep the demonstration project and  
16      accept the idea that innovative plants require  
17      more time than standard plants.

18              The multiple facility site, I think  
19      there should be one, and I have not been able to  
20      understand, having sat over here on the back  
21      benches, how California's environmental quality  
22      process can meet national standards if the  
23      requirements for alternatives are not the same as  
24      the national requirements.

25              When I get some expensive lawyers on the



1 payroll I will bring that opinion to your  
2 attention. Is there a short answer to why you can  
3 have a different requirement for alternatives than  
4 they can at the national level?

5 MR. THERKELSEN: No.

6 (Laughter.)

7 PRESIDING MEMBER LAURIE: Well, my  
8 answer is federal and state law put jurisdiction  
9 of these matters under state law, and therefore  
10 state standards.

11 MR. WILLIAMS: Okay. I still think some  
12 attention should be given to multiple facility  
13 sites, and that the applicant should be required  
14 to have site control of alternate sites in every  
15 AFC. If this were the case there'd be no reason  
16 why successive alternate sites that are deemed  
17 adequate could not be the location of future  
18 plants. I would see nothing wrong with a process  
19 that operated that way.

20 Filing fees raises the whole ugly  
21 question of, to me in my mind, of the role of the  
22 Commission. And somehow the staff has decided  
23 that the Commission should await further direction  
24 on this issue.

25 I disagree. I think you should make the

1 recommendation to the Governor, which, as I  
2 understand it, what you're doing under SB-110,  
3 you're writing a report that will go to the  
4 Governor and be considered by the Legislature on  
5 how to modify these laws.

6 I believe that you should recommend  
7 fees, and the fees should be some appropriate  
8 portion of your costs, not all of your costs. For  
9 argument's sake I would offer they should be 50  
10 percent of your estimated cost of an application.  
11 And they should be categorized by the degree of  
12 which the plant is standard.

13 You know, just picking numbers, it  
14 should be a million bucks for a 12-month schedule;  
15 two million bucks for a 24-month schedule; three  
16 million bucks for a 36-month schedule. And that  
17 that should be -- those schedule categories would  
18 be based on the attributes of the proposal, the  
19 degree to which it is standard or nonstandard, the  
20 degree to which there is site control, and the  
21 like.

22 With respect to item 12, site control,  
23 my note to myself here, and again I've committed  
24 to give you some detailed comments that are leaved  
25 within this piece of paper by Friday.

1                   PRESIDING MEMBER LAURIE: Yes, sir.

2                   MR. WILLIAMS: I do believe that there  
3                   should be site control of alternate sites, and  
4                   alternate sites should not be deemed to be a  
5                   viable site for purposes of analyses unless there  
6                   is site control.

7                   Because, in my mind, that shows the  
8                   applicant has a bona fide interest in pursuing it.  
9                   And it's not an exercise in self delusion by  
10                  somebody.

11                  Now, since I'm here, could I ask the  
12                  staff to explain to me does indeed, in your  
13                  opinion, the staff have the option of suggesting  
14                  alternate sites and what is the constraint upon  
15                  where those alternate sites can be located?

16                  DR. TOOKER: I think, as Bob Therkelsen  
17                  pointed out earlier, the CEQA guidelines provide  
18                  direction in terms of the scope and rationale for  
19                  evaluating alternative sites in the CEQA process.  
20                  And we follow that guidance. And it's based on  
21                  the initial identification of potential impacts of  
22                  the project. And then definition of alternative  
23                  sites, which would address or mitigate those  
24                  impacts if they are found to be significant.

25                  MR. WILLIAMS: Well, to be totally

1       hypothetical, suppose I'm from Monterey and  
2       Salinas, and I won't tell you which town for the  
3       moment, but I'm with a group that doesn't want to  
4       build power plants in Salinas, so I want you to  
5       consider an alternate site in Monterey.

6               Now, on what grounds can I suggest the  
7       alternate site in Monterey?

8               DR. TOOKER: Well, again, we go back in  
9       our staff analysis to needing to have a  
10      justification for our actions, and that being  
11      first identifying a potential for significant  
12      impacts from the project.

13              And then determining what  
14      recommendations we would have in terms of further  
15      analysis, in terms of alternative sites.

16              MR. WILLIAMS: Well, does the ability to  
17      do paper mitigation weigh on whether or not I can  
18      request that alternate site?

19              DR. TOOKER: I don't think that's a --

20              MR. WILLIAMS: The applicant can do  
21      paper mitigation.

22              DR. TOOKER: That's not something we use  
23      for basis of determining site alternatives  
24      analyses.

25              MR. WILLIAMS: Well, thank you for that

1       brief diversion.

2               Facility closure. Hypothetically, at  
3       least, in many stack gas treatment systems there  
4       is a possibility that a giant pile of sludge will  
5       accumulate over a 30-year period. Depending on  
6       what was burned at the facility, the sludge may be  
7       poisoned with heavy metals of various kinds.

8               So, I think the facility closure plan  
9       should be done at the start of the project, not  
10      one year before the end. And some promises should  
11      be made about will the sludge be removed or won't  
12      it be removed. And how will the toxic materials  
13      within the sludge deposit be treated and  
14      immobilized.

15              Appreciate your attention. I enjoy this  
16      stuff. So, thank you.

17              PRESIDING MEMBER LAURIE: Thank you,  
18      sir, very much. Appreciate your input, Mr.  
19      Williams.

20              Any additional comment?

21              Mr. Therkelsen, can you outline the  
22      process to be followed next, please.

23              MR. THERKELSEN: The input from this  
24      hearing, both the oral comments as well as any  
25      written comments that we receive, will be used

1        basically for three purposes.

2                One is we do have to prepare by March  
3        31st a report under SB-110 to send to the  
4        Legislature. A draft of that report -- no on?  
5        I'm sorry, I apologize.

6                To repeat for your benefit, the input  
7        from this hearing, both the oral and the written  
8        input, will be used for three purposes.

9                Number one, to help us put together the  
10       report called for under Senate Bill 110 for a  
11       report to the Legislature by March 31st. We hope  
12       to have a draft of that report released sometime  
13       next month to allow people to comment on .

14               And then that would be considered by the  
15       full Commission at a business meeting in March.

16               Secondly, the input will be used for the  
17       Commission to craft specific legislative concepts,  
18       to craft and draft wording for that. Then it  
19       would be considered again by the full Commission  
20       and discussed with the parties once again,  
21       specific wording again.

22               And thirdly, to draft specific wording  
23       for regulation that would be incorporated into the  
24       order instituting rulemaking that the Commission  
25       approved back in November I believe it was.

1                   So that's the way that input would be  
2       used.

3                   PRESIDING MEMBER LAURIE:   What is the  
4       next public document that the public can expect to  
5       see?

6                   MR. THERKELSEN:   The next one would be  
7       the draft of the Senate Bill 110 report, would be  
8       the next document that they would receive.

9                   PRESIDING MEMBER LAURIE:   And that will  
10      be passed out at a Committee approximately when?

11                  MR. THERKELSEN:   I think the schedule  
12      for that is to have that out in the middle of  
13      February.

14                  DR. TOOKER:   The original schedule from  
15      October was that that be done in early February.  
16      Right now I believe the expectation is to go to  
17      the business meeting with Committee's  
18      recommendations the first part of March.

19                  PRESIDING MEMBER LAURIE:   Okay.

20                  MR. THERKELSEN:   That's the timeframe.  
21      We would appreciate any of the parties, any of the  
22      participants laying out any other thoughts or  
23      suggestions that they would have in terms of  
24      concepts for us to consider in that report.

25                  And where, for example, people

1 identified specific things they wished the  
2 Committee had considered, if they can provide more  
3 detail on that, we would appreciate that.

4 PRESIDING MEMBER LAURIE: When we go to  
5 agendize this in front of the full Commission,  
6 make sure we have time. It may have to be a whole  
7 afternoon session on the first or whenever, but if  
8 we just include it as an agenda item, the other  
9 Commissioners won't be prepared for a multi-hour  
10 discussion.

11 MR. THERKELSEN: Okay.

12 MR. WILLIAMS: What day are you thinking  
13 of?

14 DR. TOOKER: Well, I think March 8th was  
15 the business meeting date that was targeted in the  
16 schedule.

17 MR. THERKELSEN: We'll get out more  
18 information specifically on when that is.

19 In terms of going through the items  
20 here, I think there were two items that folks  
21 indicated there was probably a desire for further  
22 discussion. That was the item on noticing and the  
23 item on eminent domain. And also on the land use  
24 item.

25 Those were three items in which I think



1       folks felt there may be a value in further  
2       discussion. And that's something that the  
3       Committee might want to consider.

4               PRESIDING MEMBER LAURIE: Thank you.

5       Mr. Williams reminds me that the notice for this  
6       hearing indicated a written comment can be  
7       provided up to and through January 28th.

8               MR. THERKELSEN: Correct.

9               PRESIDING MEMBER LAURIE: Anything else  
10      to come before this Committee? Mr. Williams.

11              MR. WILLIAMS: Just a question --

12              PRESIDING MEMBER LAURIE: Sir, at the  
13      microphone, please.

14              MR. WILLIAMS: Robert Williams. Is just  
15      one copy of that input sufficient?

16              MR. THERKELSEN: Yes.

17              PRESIDING MEMBER LAURIE: Yes.

18              MR. WILLIAMS: And to whom should it be  
19      addressed? Yourself?

20              PRESIDING MEMBER LAURIE: That's fine,  
21      and then it gets sent down to docket.

22              MR. WILLIAMS: And a copy to the docket,  
23      and then there's something like --

24              PRESIDING MEMBER LAURIE: That would be  
25      helpful, otherwise my office would normally find

1       it and send a copy down.

2               MR. WILLIAMS: Great, thank you, sir.

3               PRESIDING MEMBER LAURIE: You're quite  
4       welcome.

5               Ladies and gentlemen, I deeply  
6       appreciate this outstanding input. Some of these  
7       issues are not capable of easy resolution. And  
8       your thoughts are always appreciated.

9               You will hear from us on this subject  
10      next towards the middle to end of February when a  
11      draft of the 110 report goes out, is that correct,  
12      Mr. Therkelsen?

13              MR. THERKELSEN: That's correct.

14              PRESIDING MEMBER LAURIE: Okay, thank  
15      you very much.

16              (Whereupon, at 5:03 p.m., the hearing  
17      was concluded.)

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## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of February, 2000.

VALORIE PHILLIPS

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